PHILIPPINE REPORTS

VOL. 683

FEBRUARY 27, 2012 TO MARCH 7, 2012

VOLUME 683

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 27, 2012 TO MARCH 7, 2012

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. P-11-2999. February 27, 2012]
(Formerly OCA IPI No. 10-3517-P)

SHEILA G. DEL ROSARIO, Court Stenographer III, Regional Trial Court, Branch 36, Santiago City, Isabela, *complainant, vs.* **MARY ANNE C. PASCUA, Court Stenographer III, same Court,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE EMPLOYEE'S FAILURE TO SECURE A TRAVEL AUTHORITY AND TO STATE IN HER LEAVE APPLICATION HER FOREIGN TRAVEL CONSTITUTE VIOLATION OF OFFICE RULES AND REGULATIONS; PROPER PENALTY.— OCA Circular No. 49-2003 provides that "*court personnel who wish to travel abroad must secure a travel authority from the Office of the Court Administrator*." Section 67 of the Omnibus Rules on Leave provides that "*[a]ny violation of the leave laws, rules or regulations, or any misrepresentation or deception in connection with an application for leave shall be a ground for disciplinary action*." Under the Uniform Rules on Administrative Cases in the Civil Service, violation of reasonable office rules and regulations is a light offense punishable with the penalty of reprimand for the first offense, suspension of one (1) day to thirty (30) days for the second offense, and dismissal from

the service for the third offense. In this case, since the respondent traveled without securing a travel authority and did not state her foreign travel in her leave application, she is guilty of violating at least two (2) office rules and regulations. These twin violations should be reflected in her penalties, particularly in the second offense – failure to state in her leave application her travel abroad – which, to our mind, strongly suggests deception on her part amounting to dishonesty. She should be suspended without pay for three (3) months for her twin infractions. Let this be a warning to all who might be minded to risk a one-month suspension if only to avoid disclosing to the Court that they shall be traveling abroad.

2. ID.; ID.; CHARGE OF DISHONESTY; TERM "DISHONESTY," DEFINED; ABSENT DELIBERATE INTENT TO MISLEAD, DECEIVE OR DEFRAUD, THE DISCREPANCY IN THE EMPLOYEE'S DATE OF BIRTH IN HER RECORDS DOES NOT AMOUNT TO DISHONESTY.— We find that the discrepancy in the respondent's date of birth in her records does not amount to dishonesty, as she made no false statement. No deliberate intent to mislead, deceive or defraud appears from the cited circumstances of this case. Dishonesty means "the concealment of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is an absence of integrity, a disposition to betray, cheat, deceive or defraud, bad faith." The respondent's date of birth is not a fact directly relevant to her functions or qualification to office or connected with the performance of her duties. Besides, her other records, *i.e.*, baptismal certificate and marriage contract, reflected June 27, 1974 as her true date of birth; she simply wanted to reflect this fact in her records.

CARPIO, *J., dissenting opinion:*

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CHARGE OF VIOLATION OF OFFICE RULES AND REGULATIONS; THE EMPLOYEE'S RIGHT TO TRAVEL ABROAD, DURING HER APPROVED LEAVE OF ABSENCE, CANNOT BE IMPAIRED EXCEPT IN THE INTEREST OF NATIONAL SECURITY, PUBLIC SAFETY, OR PUBLIC HEALTH, AS MAY BE PROVIDED BY LAW.— I disagree with the *ponente* on the issue of respondent's

unauthorized foreign travel. This issue involves a government employee's constitutional right to travel abroad **during her approved leave of absence**. My dissent in the recent case of *Leave Division, OCA-OAS v. Heusdens*, is applicable to this case, thus: Under Section 60 of Executive Order No. 292 (EO 292), officers and employees in the Civil Service are entitled to leave of absence, with or without pay, as may be provided by law and the rules and regulations of the Civil Service Commission. x x x [A] citizen's right to travel is guaranteed by Section 6, Article III of the 1987 Constitution x x x. Although the constitutional right to travel is not absolute, it can only be restricted **in the interest of national security, public safety, or public health, as may be provided by law**. As held in *Silverio v. Court of Appeals*: x x x. Furthermore, respondent's travel abroad, **during her approved leave**, did not require approval from anyone because respondent, like any other citizen, enjoys the constitutional right to travel within the Philippines or abroad. Respondent's right to travel abroad, **during her approved leave**, cannot be impaired "except in the interest of national security, public safety, or public health, as may be provided by law." Not one of these grounds is present in this case. There is no doubt that the use of leave of absence can be regulated without impairing the employees' right to privacy and to travel. In fact, the Civil Service Commission has promulgated the Omnibus Rules Implementing Book V of Executive Order No. 292, of which Rule XVI is the Omnibus Rules on Leave. Such rules and regulations are adopted to balance the well-being and benefit of the government employees and the efficiency and productivity in the government service. Thus, the requirement of securing approval for any leave of absence is a reasonable and valid regulation to insure continuity of service in the government. However, once a leave of absence is approved, any restriction during the approved leave on the right to travel of the government employee violates his or her constitutional right to travel.

R E S O L U T I O N

BRION, *J.*:

In her complaint-affidavit,[1] complainant Sheila G. del Rosario charges Mary Anne C. Pascua (*respondent*), Court Stenographer III of the Regional Trial Court, Branch 36, Santiago City, Isabela, with Dishonesty (1) for traveling to Hong Kong from June 1 to 6, 2008 without securing a travel authority from the Supreme Court and for not stating in her leave application her foreign travel; and (2) for misrepresenting in her official documents in the Supreme Court her date of birth as June 27, 1974, when her registered date of birth in the National Statistics Office (*NSO*) is August 7, 1974.

The Office of the Court Administrator (*OCA*) directed the respondent to comment on the complaint.[2]

The respondent admitted that she failed to secure a travel authority from the Supreme Court, but explained that it was due to mere inadvertence. She alleged that her true date of birth, as reflected in her baptismal certificate and her marriage contract, is June 27, 1974, and she was in the process of correcting with the NSO her registered date of birth to reflect her true date of birth. She insisted that she did not commit any act of dishonesty.[3]

The OCA recommended that the present matter be redocketed as a regular administrative matter. It found the respondent guilty of violation of reasonable office rules and regulations for traveling abroad without the required travel authority. It recommended that the respondent be reprimanded for her first offense.[4]

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[1] Dated October 4, 2010; *rollo*, pp. 6-7.

[2] *Id*. at 19.

[3] Dated November 30, 2010; *id*. at 20-23.

[4] Memorandum dated May 2, 2011; *id*. at 31-35.

The OCA also found the respondent guilty of simple dishonesty for failing to disclose in her leave application her foreign travel. It recommended the penalty of suspension for one (1) month. It noted that the respondent did not commit any dishonesty regarding the discrepancy in her date of birth since she wanted to reflect her true date of birth as June 27, 1974, though her registered date of birth has not yet been corrected.[5]

We adopt the OCA's findings, but modify the recommended penalties.

OCA Circular No. 49-2003[6] provides that "*court personnel who wish to travel abroad must secure a travel authority from the Office of the Court Administrator*." Section 67 of the Omnibus Rules on Leave[7] provides that "*[a]ny violation of the leave laws, rules or regulations, or any misrepresentation or deception in connection with an application for leave shall be a ground for disciplinary action*." Under the Uniform Rules on Administrative Cases in the Civil Service,[8] violation of reasonable office rules and regulations is a light offense punishable with the penalty of reprimand for the first offense, suspension of one (1) day to thirty (30) days for the second offense, and dismissal from the service for the third offense.

In this case, since the respondent traveled without securing a travel authority and did not state her foreign travel in her leave application, she is guilty of violating at least two (2) office rules and regulations. These twin violations should be reflected in her penalties, particularly in the second offense – failure to state in her leave application her travel abroad – which, to our mind, strongly suggests deception on her part amounting to

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[5] *Ibid*.

[6] Dated May 20, 2003.

[7] As amended by Civil Service Commission Memorandum Circular No. 41, s. 1998; Nos. 6, 14 and 24, s. 1999.

[8] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by Memorandum Circular No. 19, s. 1999.

dishonesty. She should be suspended without pay for three (3) months for her twin infractions. Let this be a warning to all who might be minded to risk a one-month suspension if only to avoid disclosing to the Court that they shall be traveling abroad.

We find that the discrepancy in the respondent's date of birth in her records does not amount to dishonesty, as she made no false statement. No deliberate intent to mislead, deceive or defraud appears from the cited circumstances of this case. Dishonesty means "the concealment of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is an absence of integrity, a disposition to betray, cheat, deceive or defraud, bad faith."[9] The respondent's date of birth is not a fact directly relevant to her functions or qualification to office or connected with the performance of her duties. Besides, her other records, *i.e.*, baptismal certificate and marriage contract, reflected June 27, 1974 as her true date of birth; she simply wanted to reflect this fact in her records.

WHEREFORE, respondent Mary Anne C. Pascua, Court Stenographer III of the Regional Trial Court, Branch 36, Santiago City, Isabela, is found **GUILTY** of violation of the rules requiring court permission for travel abroad and for failing to disclose her intended foreign trip in her leave application. For her twin violations, she is hereby **SUSPENDED** for three (3) months without pay, and **WARNED** that a repetition of the same or similar offense will be penalized more severely.

SO ORDERED.

Perez and *Reyes, JJ.,* concur.

Carpio, J. (Chairperson), see dissenting opinion.

Sereno, J., joins the dissent of *J.* Carpio.

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[9] *Basilla v. Ricafort,* A.M. No. P-06-2233, September 26, 2008, 566 SCRA 425, 433.

DISSENTING OPINION

CARPIO, *J.*:

Complainant alleged that respondent, during her approved leave of absence, traveled to Hong Kong on 1 to 6 June 2008 without securing a travel authority from the Supreme Court and that she omitted to state her intended foreign travel in her leave application. Furthermore, complainant charged respondent of dishonesty for misrepresenting her date of birth as 27 June 1974 in her official documents, when her registered date of birth in the National Statistics Office is 7 August 1974.

Respondent maintained that she failed to secure a travel authority from the Supreme Court due to inadvertence. Respondent assumed that since she did not have custody of and is not accountable for government funds, then she is not required to secure a clearance from the Office of the Court Administrator before she can travel abroad. On the discrepancy in her date of birth, respondent claimed that she is in the process of correcting her Certificate of Live Birth to reflect her true date of birth which is 7 August 1974.

The *ponente* finds that "the discrepancy in the respondent's date of birth in her records does not amount to dishonesty, as she made no false statement." However, the *ponente* holds that respondent has violated OCA Circular No. 49-2003,[1] for failure

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[1] GUIDELINES ON REQUESTS FOR TRAVEL ABROAD AND EXTENSIONS FOR TRAVEL/STAY ABROAD. The pertinent provisions of OCA Circular No. 49-2003 read:

B. VACATION LEAVE TO BE SPENT ABROAD

Pursuant to the resolution in A.M. No. 99-12-08-SC dated 06 November 2000, all foreign travels of judges and court personnel, regardless of the number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.

1. Judges and court personnel who wish to travel abroad must secure a travel authority from the Office of the Court Administrator. The judge or court personnel must submit the following:

to secure permission to travel abroad and for failing to disclose her intended foreign trip in her leave application. The *ponente* finds respondent "guilty of violation of the rules requiring court permission for travel abroad and for failing to disclose her intended foreign trip in her leave application." Thus, respondent is imposed the penalty of three-month suspension without pay and warned that a repetition of the same or similar offense will be penalized more severely.

I disagree with the *ponente* on the issue of respondent's unauthorized foreign travel. This issue involves a government employee's constitutional right to travel abroad **during her approved leave of absence**.

(a) For Judges:

- application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad
- application for leave covering the period of the travel abroad, favorably recommended by the Executive Judge
- certification from the Statistics Division, Court Management Office, OCA as to the condition of the docket

(b) For Court Personnel:

- application or letter-request addressed to the Court Administrator stating the purpose of the travel abroad
- application for leave covering the period of the travel abroad, favorably recommended by the Presiding Judge or Executive Judge
- clearance as to money and property accountability
- clearance as to pending criminal and administrative case filed against him/her, if any
- for court stenographer, clearance as to pending stenographic notes for transcription from his/her court and from the Court of Appeals
- Supreme Court clearance

2. Complete requirements should be submitted to and received by the Office of the Court Administrator at least two weeks before the intended period. No action shall be taken on requests for travel authority with incomplete requirements. Likewise, applications for travel abroad received less than two weeks of the intended travel shall not be favorably acted upon.

x x x x x x x x x

4. Judges and personnel who shall leave the country without travel authority issued by Office of the Court Administrator shall be subject to disciplinary action.

My dissent in the recent case of *Leave Division, OCA-OAS v. Heusdens*,[2] is applicable to this case, thus:

> Under Section 60 of Executive Order No. 292 (EO 292), officers and employees in the Civil Service are entitled to leave of absence, with or without pay, as may be provided by law and the rules and regulations of the Civil Service Commission.
>
> x x x x x x x x x
>
> [A] citizen's right to travel is guaranteed by Section 6, Article III of the 1987 Constitution:
>
> > SEC. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. **Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.**
>
> Although the constitutional right to travel is not absolute, it can only be restricted **in the interest of national security, public safety, or public health, as may be provided by law**. As held in *Silverio v. Court of Appeals*:
>
> > Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without court order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitive phrase which did not appear in the 1973 text (The Constitution, Bernas, Joaquin G., S.J., Vol. I, First Edition, 1987, p. 263). **Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party** (See *Salonga v. Hermoso & Travel Processing Center*, No. L-53622, 25 April 1980, 97 SCRA 121).

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[2] A.M. No. P-11-2927, 13 December 2011. Citations omitted.

The constitutional right to travel cannot be impaired without due process of law. Here, due process of law requires the existence of a law regulating travel abroad, in the interest of national security, public safety or public health. There is no such law applicable to the travel abroad of respondent. In the absence of such a law, the denial of respondent's right to travel abroad is a gross violation of a fundamental constitutional right. The only exception recognized so far is when a court orders the impairment of the right to travel abroad in connection with a pending criminal case. Another possible exception is if Congress, pursuant to its power of legislative inquiry, issues a subpoena or arrest order against a person. These exceptions, however, do not apply in the present case. Here, respondent was not even facing a preliminary investigation or an administrative complaint when she left the country.

x x x x x x x x x

During her approved leave of absence, respondent's time was her own personal time and she could be wherever she wanted to be. The Court cannot inquire what respondent does during her leave of absence since that would constitute unwarranted interference into her private affairs and would encroach on her right to privacy. The right to privacy is "the right of an individual to be let alone, or to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned." Under Article 26 of the Civil Code, the right to privacy is expressly protected:

> Art. 26. **Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons**. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:
>
> (1) Prying into the privacy of another's residence;
>
> (2) Meddling with or disturbing the private life or family relations of another;
>
> (3) Intriguing to cause another to be alienated from his friends;
>
> (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

Furthermore, respondent's travel abroad, **during her approved leave**, did not require approval from anyone because respondent, like any other citizen, enjoys the constitutional right to travel within the Philippines or abroad. Respondent's right to travel abroad, **during her approved leave**, cannot be impaired "except in the interest of national security, public safety, or public health, as may be provided by law." Not one of these grounds is present in this case.

There is no doubt that the use of leave of absence can be regulated without impairing the employees' right to privacy and to travel. In fact, the Civil Service Commission has promulgated the Omnibus Rules Implementing Book V of Executive Order No. 292, of which Rule XVI is the Omnibus Rules on Leave. Such rules and regulations are adopted to balance the well-being and benefit of the government employees and the efficiency and productivity in the government service. Thus, the requirement of securing approval for any leave of absence is a reasonable and valid regulation to insure continuity of service in the government. However, once a leave of absence is approved, any restriction during the approved leave on the right to travel of the government employee violates his or her constitutional right to travel.

This Court should be the first to protect the right to travel of its employees, a right enshrined not only in the Bill of Rights but also in the United Nations Universal Declaration of Human Rights as well as in the International Covenant on Civil and Political Rights. The Philippines is a signatory to the Declaration and a state party to the Covenant. In fact, the duty of this Court under Section 5(5), Article VIII of the Constitution is to "promulgate rules concerning the protection and enforcement of constitutional rights," not to curtail such rights. Neither can this Court promulgate rules that "diminish" or even "modify" substantive rights like the constitutional right to travel. (Emphasis supplied)

Accordingly, I vote to **DISMISS** the administrative complaint against Mary Anne C. Pascua, Court Stenographer III, Regional Trial Court, Branch 36, Santiago City, Isabela.

THIRD DIVISION

[G.R. No. 162196. February 27, 2012]

SAN JOSE TIMBER CORPORATION and CASILAYAN SOFTWOOD DEVELOPMENT CORPORATION, *petitioners, vs.* **SECURITIES AND EXCHANGE COMMISSION, TIERRA FACTOR CORPORATION and OTHER CREDITORS OF SAN JOSE TIMBER CORPORATION and CASILAYAN SOFTWOOD DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; REHABILITATION; DEFINED AND EXPLAINED.— Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public. Under the Rules of Procedure on Corporate Rehabilitation, "rehabilitation" is defined as the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the corporation continues as a going concern than if it is immediately liquidated.

2. ID.; ID.; ID.; REHABILITATION PLAN IS AN INDISPENSABLE REQUIREMENT IN THE REHABILITATION OF A DISTRESSED CORPORATION; REQUISITES; MERE UNSUPPORTED ASSERTIONS BY THE DEBTOR THAT THE PARTIES ARE CLOSE TO AN AGREEMENT OR THAT BUSINESS IS EXPECTED TO PICK UP IN THE NEXT SEVERAL QUARTERS ARE INSUFFICIENT.— An indispensable requirement in the rehabilitation of a distressed corporation is the rehabilitation plan. Section 5 of the Interim

Rules of Procedure on Corporate Rehabilitation provides the requisites thereof: **SEC. 5. Rehabilitation** Plan. — The **rehabilitation** plan shall include (a) the desired business targets or goals and the duration and coverage of the **rehabilitation;** (b) the terms and conditions of such **rehabilitation** which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the **rehabilitation** plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest; (e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the **rehabilitation** plan. x x x Given the high standards that the Rules require, mere unsupported assertions by the debtor that "the parties are close to an agreement" or that "business is expected to pick up in the next several quarters" are not sufficient.

3. ID.; ID.; ID; SUCCESSFUL REHABILITATION; TWO FACTORS.— "A successful rehabilitation usually depends on two factors: (1) a positive change in the business fortunes of the debtor, and (2) the willingness of the creditors and shareholders to arrive at a compromise agreement on repayment burdens, extent of dilution, *etc.* The debtor must demonstrate by convincing and compelling evidence that these circumstances exist or are likely to exist by the time the debtor submits his 'revised or substitute rehabilitation plan for the final approval of the court.'"

4. ID.; ID.; ID.; ID.; CIRCUMSTANCES THAT MIGHT DEMONSTRATE IN A CONVINCING AND COMPELLING MANNER THAT THE DEBTOR COULD BE REHABILITATED, ENUMERATED.— Circumstances that might demonstrate in a convincing and compelling manner that the debtor could successfully be rehabilitated include the following: a) the business fortunes of the debtor have actually improved since the petition was filed; b) the general circumstances and forecast for the sector in which the debtor

is operating supports the likelihood that the debtor's business will revive; c) the debtor has taken concrete steps to improve its operating efficiency; d) the debtor has obtained legally binding investment commitments from parties contingent on the approval of a rehabilitation plan; e) the debtor has successfully addressed other factors that would increase the risk that the debtor's rehabilitation plan would fail; f) the majority of the secured and unsecured creditors have expressly demonstrated a preference that the debtor be rehabilitated rather than liquidated and are willing to compromise on their claims to reach that result; g) the debtor's shareholders have expressed a willingness to dilute their equity in connection with a debt equity swap.

5. ID.; ID.; ID.; RESUMPTION OF THE REHABILITATION OF PETITIONER CORPORATION, PROPER.— On August 15, 2005, however, an event supervened. With the lifting of the logging moratorium in Samar, an indispensable element for the possible rehabilitation of SJTC has been made a reality. Considering the extension granted by the DENR, the TLA of SJTC will expire on 2021, or nine (9) years from now. It appears from the proposed Adjusted Rehabilitation Plan, that SJTC would only need a period of 24 months from the lifting of the logging moratorium within which to liquidate all of its liabilities, except those of its affiliates. x x x. The Court is of the considered view that SJTC should be given a second chance to recover and pay off its creditors. The only practical way of doing it is to resume the rehabilitation of SJTC which estimated its first year production upon resumption of operations at 29,000 cubic meters. Thereafter, production is projected to rise to 60,000 cubic meters per year. If the estimated selling price per cubic meter as of December 31, 1991 was ₱3,500.00 and between ₱5,000.00 and ₱6,000.00 in 2004, there is no doubt that the price has again risen.

6. ID.; ID.; ID.; ID.; REHABILITATION OF PETITIONER CORPORATION, HIGHLY FEASIBLE; CASE REMANDED TO THE SECURITIES AND EXCHANGE COMMISSIONS (SEC) FOR FURTHER EVALUATION AND APPROPRIATE ACTION.— The Court is not unaware of the issuance of Executive Order (E.O.) No. 23 on February 1, 2011. E.O. No. 23 declares a Moratorium on the Cutting and Harvesting of Timber

in the Natural and Residual Forests and Creates the Anti-Illegal Logging Task Force that will enforce the moratorium. It aims mainly at the promotion of intergeneration responsibility to protect the environment. As pronounced in the DENR website, however, *it does not impose a total log ban* in the country. What is being protected by the executive order is simply the natural forests and residual forests. Section 2 thereof provides for a moratorium on the cutting and harvesting of timber in the natural and residual forests of the entire country. Timber companies, such as petitioner SJTC, may still be allowed to cut trees subject to the provisions thereof. Thus, SJTC's rehabilitation appears highly feasible and the proceedings thereon should be revived. It should, therefore, be given an opportunity to be heard by the SEC to determine if it could maintain its corporate existence. For said reason, the case should be remanded to the SEC so that it could factor in the aforecited figures and claims of SJTC and assess whether or not SJTC could still recover. It appears from the figures that SJTC can generate sufficient income to pay all its obligations to all its creditors except, as the petitioners pledged, its corporate affiliates who allegedly represent more than 66% of the liabilities.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretana for petitioners.
The Solicitor General for pubic respondent.
Siguion Reyna Montecillo & Ongsiako for private respondents.
Amador M. Montero, Joselito A. Vivit & Marites Sto. Tomas-Alonzo for SSS.
Efren C. Carag for Essenpharma, Inc.
Joel Angelo C. Cruz & Rommel L. Bawalan for Petron Corp.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 seeking to set aside the September 22, 2003 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 70898, entitled "*San Jose Timber Corporation, et al. v. Securities and Exchange Commission, et al.,*" which affirmed the May 6, 2002 Decision[2] of the Securities and Exchange Commission *(SEC),* in SEC Case No. 3843, dismissing the petition for appointment of a rehabilitation receiver and suspension of payments filed by San Jose Timber Corporation *(SJTC)* and Casilayan Softwood Development Corporation (*CSDC)* and ordering the dissolution and liquidation of SJTC.

The Facts

Petitioner CSDC is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and the controlling stockholder and creditor of petitioner SJTC, being the owner of more than 99% of its outstanding capital stock.

Petitioner SJTC is primarily engaged in the operation of a logging concession with a base camp in Pabanog, Wright, Western Samar, under and by virtue of a Timber License Agreement *(TLA)* No. 118 issued by the Department of Environment and Natural Resources *(DENR).* The TLA was to expire in 2007.

On February 8, 1989, the DENR issued a Moratorium Order *(MO)* suspending all logging operations in the island of Samar effective February 1989 up to May 30, 1989.

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[1] *Rollo,* pp. 31-40. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justice Mariano C. del Castillo (now a member of this Court) and Associate Justice Edgardo F. Sundiam.

[2] *Id.* at 162-166.

As a consequence, SJTC was constrained to cease operations effective February 8, 1989, despite the fact that the expiration of the period set forth in the MO was still up to May 30, 1989.

The cessation of its operations caused SJTC to lose all its income. Thus, on August 7, 1990, SJTC and CSDC filed with the SEC a petition for the appointment of a rehabilitation receiver and for suspension of payments entitled, *"In Re: Petition for the Appointment of a Rehabilitation Receiver for SJTC Timber Corporation and For Suspension of Payments,"* which was docketed as SEC Case No. 3843.

After due hearing, the SEC Hearing Panel, in its Order dated March 14, 1991, granted the appointment of a rehabilitation receiver and suspension of payments with the condition that SJTC would *"resuscitate its operations and properly service its liabilities in accordance with the duly approved schedule to be submitted by the Rehabilitation Receiver"*[3] within a one (1) year period.

On February 26, 1992, the petitioners submitted their *Motion to Approve Revised Rehabilitation Plan* and *Urgent Motion to Extend Waiting Period for Commencement of Rehabilitation* dated February 24, 1992 to allow the proper government authorities to deliberate on and approve the lifting of the existing logging moratorium in Samar. The petitioners prayed that the waiting period be extended by one (1) year and five (5) months from March 15, 1992.

The SEC Hearing Panel extended the waiting period up to August 15, 1992 but held in abeyance its approval of the revised rehabilitation plan.

Upon subsequent motions of petitioners, SJTC and CSDC, the SEC Hearing Panel extended the waiting period several times.

Meanwhile, on March 4, 1996, prior to the expiration of the waiting period to commence rehabilitation, the petitioners filed their *Motion For Settlement of Claims Against Petitioner San*

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[3] Annex "F", p. 7; Petition, *id.* at 44-52.

Jose dated February 21, 1996. Considering that the lifting of the logging moratorium in Samar did not appear to be close to fulfillment at that juncture, the petitioners offered to either (1) pay the claims of the creditor in full provided they await the rehabilitation of SJTC; or (2) immediately settle the claims of the creditors by paying them 30% of their substantiated claims. They alleged that:

> 1. The Honorable Hearing Panel's Order of 6 March 1995 extended the waiting period for the commencement of the rehabilitation of petitioner San Jose Timber Corporation ("San Jose") for one year, or up to 6 March 1996.
>
> 1.1 However, with barely a week before the lapse of this deadline, the precondition for the commencement of the rehabilitation as set forth in the proposed rehabilitation plan, *i.e.*, the lifting of the logging moratorium in the place where the timber concession is located either by the enactment of a selective logging law or the administrative cessation of the moratorium, does not appear to be close to fulfillment soon.
>
> 1.2 The claimants thus face the uninviting prospect of seeing petitioner San Jose being dissolved and its few remaining assets, worth no more than ₱15 Million, being fought over by supposed creditors whose combined claim exceeds ₱54 Million. Even if these assets are prorated among the creditors, each one of them will get less than 25% of his claim.[4]

In its Order[5] dated July 30, 1996, the SEC granted the motion for settlement of claims subject to certain conditions specifically stated in the dispositive portion of the said order, which reads:

> WHEREFORE, it appearing that the approval of the proposal of petitioner is to the best interest of all the creditors of SJTC, and considering that the same is not contrary to law, morals or public policy the proposal that SJTC shall pay the interested claimants 30% of the principal claims is hereby APPROVED, and shall be binding upon all those interested claimants subject to the following conditions:

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[4] Annex "K", pp. 1-2, Petition, *id.* at 125-128.

[5] Annex "P", pp. 5-7, Petition, *id.* at 141-147.

1. That the claims of the interested claimants are sufficiently substantiated and the same are confirmed by the Rehabilitation Receiver;

2. That the funding for the settlement will be sourced from the advances to be made by corporate creditors Jaka Equities Corporation, Royal Match, Inc., Eurasia Carriers Company, Inc. and Casilayan Softwood Development Corporation, which corporate creditors will be reimbursed the full amount of their advances plus interests at the same rates applicable to the remaining creditors upon the rehabilitation of SJTC;

3. That those who objected to the 30% settlement offer and those who while failing to object, deem it appropriate not to accept the offer now, still have the option to wait for the eventual rehabilitation of SJTC and be paid in the manner and to the extent set forth in the rehabilitation plan that will be approved by this Hearing Panel; and

4. That the rehabilitation of SJTC will commence upon the lifting of the logging moratorium in its logging concession either by the enactment of a statute allowing selective logging or the lifting of the said moratorium.

Petitioners are hereby directed to furnish the creditors of this Order at their own expense.

SO ORDERED.

Subsequently, the petitioners filed their *Motion to Dispose of Personal Properties* dated May 7, 1997 which was granted by the SEC in its Order dated November 26, 1997. The SEC ordered the proceeds of the sale be deposited in an escrow account to be withdrawn only for the settlement of petitioners' obligation.[6]

On May 6, 2002, however, the SEC *En Banc motu proprio* handed down its decision terminating the rehabilitation proceedings and dismissing the petition for rehabilitation. The SEC opined that SJTC could no longer be rehabilitated because the logging moratorium/ban, which was crucial for its rehabilitation, had not been lifted. The SEC decision, in its pertinent parts, reads:

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[6] Annex "T", p. 3; Petition, *id.* at 153-155.

Based on the foregoing, it is evident that the instant petition should have been dismissed long ago. It is quite obvious that San Jose can no longer be rehabilitated. In fact, the prospect for its rehabilitation has been dim from the very beginning in the light of the uncertainty surrounding the lifting of the logging moratorium. If the previous Hearing Panel had been lenient and accommodating, it could only have been because of its honest belief that it would be in the best interest of all parties, particularly the creditors who would not be able to collect fully on their claims, to attempt to rehabilitate San Jose. But even the best of intentions cannot prop an unachievable aspiration ad infinitum. It has been more than thirteen years since the DENR imposed the logging moratorium and the same is still effective. x x x.

The hopelessness and futility of petitioners' cause is further made manifest in the petitioners' and the rehabilitation receiver's silence and inaction for almost five years. The only thing that keeps petitioners interested in the instant petition is San Jose's Timber Licensing Agreement (TLA) that is set to expire in 2007, the preservation of which appears to still be of some value to petitioners. x x x.[7]

The May 6, 2002 Decision of the SEC was affirmed by the CA in its September 22, 2003 Decision stating, among others, that:

" . . . Adequately clear from the records is that the proposed rehabilitation plan submitted by the petitioners depends entirely on the lifting of the logging ban either because of the lifting of the moratorium on logging activities in Samar issued by the DENR, or by the enactment of a law on selective logging. Needless to say, the lifting of the logging ban is indispensable to the rehabilitation of petitioners' logging company. However, other than the petitioners' bare assertion that the lifting of the logging moratorium or the enactment of a law on selective logging is 'foreseeable" and is likely to happen in the near future, there is simply no evidence on record to show, with certainty that it is indeed, going to take place in the immediate future. Verily, to sustain petitioners' assertions could result to an unjust situation wherein the corporate rehabilitation will continually be held in abeyance pending the approval of the law on selective logging or the lifting of logging moratorium, the

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[7] Annex "W", p. 4; Petition, *id.* at 162-166.

happening of which is uncertain considering the absence of evidence to prove that there is an imminent likelihood of its occurrence. Such a situation is definitely prejudicial to the interests of the creditors and the investors whose rights the law is precisely designed to protect."[8]

The petitioners filed a motion for reconsideration of the aforesaid decision but it was denied in the CA Resolution dated January 29, 2004.

On March 8, 2004, the petitioners filed this petition for review before this Court on the ground that the CA erred in affirming the dissolution of SJTC when the vast majority of the creditors had agreed to await the rehabilitation of SJTC. They believe that the rehabilitation was still feasible considering that the TLA was still valid up to 2007 and under the proposed revised rehabilitation plan of SJTC, the latter would only need 24 months after the lifting of the logging moratorium to fully settle the claims of the creditors, except those of the affiliates.

Significantly, except for the Social Security System *(SSS)*, which incidentally had no more claims against SJTC, none of the creditors filed an opposition to or comment on the petition.

Meanwhile, during the pendency of the petition before the Court, the DENR issued an Order dated August 15, 2005, allowing SJTC to resume operations and extending the term of the TLA up to **2021**. The dispositive portion of the Order reads:

> WHEREFORE, in light of the foregoing, the Moratorium Order dated 8 February 1998 is hereby recognized as having lapsed on 30 May 1989. San Jose Timber Corporation is hereby allowed to pursue its rights and activities under its TLA No. 118 until 30 June 2007, with an extension of the period of said TLA equivalent to the time that elapsed from 31 May 1989 until promulgation of this Order.
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> SO ORDERED.[9]

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[8] CA Decision dated September 22, 2003, p. 8; Annex "A" of the Petition, *id.* at 31-40.

[9] Annex "A", p. 9; Supplemental Petition, *id*. at 2686-2694.

Consequently, on October 14, 2005, the petitioners filed their *Supplemental Petition*[10] with the Court citing the August 15, 2005 DENR Order praying for the reversal of the CA decision and the remand of the case to the SEC for the immediate approval and implementation of the rehabilitation plan.

On July 9, 2008, the Court resolved to dispense with the comments of the other respondent creditors, gave due course to the petition and directed the parties to submit their respective memoranda within thirty (30) days from notice.[11]

Records disclose that on October 6, 2008, SJTC and CSDC filed their Memorandum. Thereafter, the SEC and the SSS filed their respective memoranda. On January 29, 2009, petitioners SJTC and CSDC filed their Reply Memorandum.

In its Resolution dated March 30, 2009, the Court resolved to note the filing of the Reply Memorandum and to await the memoranda of the other respondent creditors.

To date, no other memorandum has been filed.

In their Memorandum, the petitioners advanced the following

ARGUMENTS

A. THE COURT OF APPEALS GRAVELY ERRED AND ACTED CONTRARY TO LAW WHEN IT UPHELD THE DECISION DATED 6 MAY 2002 OF THE SECURITIES AND EXCHANGE COMMISSION WHICH ORDERED THE IMMEDIATE DISSOLUTION OF PETITIONER SAN JOSE, CONSIDERING THAT:

1. THE MANDATE OF THE SEC IS NOT TO IMMEDIATELY LIQUIDATE ANY DISTRESSED CORPORATION; RATHER, IT IS TO PROMOTE A WIDER AND MORE EQUITABLE DISTRIBUTION OF WEALTH.

2. THE REHABILITATION OF PETITIONER SAN JOSE IS STILL FEASIBLE.

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[10] *Id.* at 2651-2667.

[11] *Id.* at 3308.

3. THE SEC ILLEGALLY SUBSTITUTED ITS WILL OVER THAT OF THE CREDITORS, THE VAST MAJORITY OF WHOM HAVE AGREED TO WAIT FOR THE LIFTING OF THE LOGGING MORATORIUM SO THAT PETITIONER SAN JOSE CAN COMMENCE REHABILITATION.

4. LIQUIDATION WILL NOT SERVE ANY USEFUL PURPOSE. IT IS DISADVANTAGEOUS TO BOTH CREDITORS AND PETITIONERS. MOREOVER, THE PURPOSE OF THE LIQUIDATION HAS BEEN SERVED IN THE REHABILITATION PROCEEDINGS.[12]

In advocacy of their position, the petitioners argue that the SEC acted illegally and beyond its statutory mandate when it ordered the termination of the rehabilitation proceedings. The CA, in turn, acted contrary to law when it upheld the SEC's decision.

The petitioners posit that while the SEC is empowered to *motu proprio* terminate rehabilitation when, in its opinion, it is no longer feasible, Presidential Decree (P.D.) No. 902-A qualifies that such power must be exercised taking into consideration the "best interest of the stockholders, parties-litigants, creditors, or the general public." Clearly, the SEC is mandated to protect not only the creditors but the distressed corporation as well. This is because the "rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public."[13]

It is further argued that when the decision of the SEC to terminate the rehabilitation of a corporation and order its dissolution will not lead to a meaningful and equitable distribution of wealth among the creditors, stockholders and employees, such decision can be struck down as illegal for being violative of the statutory mandate of the SEC. The SEC illegally ordered the dissolution of SJTC because (1) the rehabilitation is still

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[12] Memorandum of SJTC; *id.* at 3366 to 3367.

[13] Citing *Rubber World Phils., Inc. v. NLRC*, G.R. No. 126773, April 14, 1999, 305 SCRA 722.

feasible; and (2) the immediate dissolution is actually detrimental to the interests of the creditors.[14]

The petitioners believe that the rehabilitation of SJTC is feasible because its major corporate creditors, namely: Jaka Investment Corporation, Jaka Equities Corporation, Royal Match, Inc., Eurasia Carriers Company, Inc. and Casilayan Softwood Development Corporation, have a combined credit of ₱36 million. This amount constitutes more than 66% of the liabilities of SJTC. These corporate creditors have agreed to extend the waiting period for the commencement of the rehabilitation of SJTC until such time that the logging moratorium is lifted.

It is likewise averred that liquidation will not have any useful purpose. It is disadvantageous to both creditors and petitioners. Moreover, the purpose of the liquidation has been served in the rehabilitation proceedings. If SJTC is liquidated, its assets, divided by its existing liabilities, will give each creditor only 27% of their respective claims. Indeed, as found by the SEC Hearing Panel in its July 30, 1996 Order,[15]

> [It] is clear from the uncontested figures relative to the total assets and liabilities of SJTC that each creditor will get less than 30% of the value of its claim. The reason for this is that dividing SJTC's total assets in the amount of ₱14,405,868.00 by its total liabilities in the amount of ₱53,519,650.00 will yield a factor of only .27, which corresponds to 27%.

Position of the SEC

The SEC agrees that its primary basis in dismissing the petition for the appointment of a rehabilitation receiver and suspension of payment has been lost because of the DENR's Order dated August 15, 2005 lifting the logging moratorium and allowing SJTC to continue its logging operations under TLA No. 118.

Despite the same, it is of the position that SJTC's rehabilitation is no longer feasible and viable because it has already disposed

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[14] Memorandum for Petitioners, *rollo*, pp. 3367 to 3369.

[15] Annex "P" of the Petition, *id.* at 141-147.

of its properties such as various machineries and equipment and other valuable assets which are indispensable to its logging operations. In other words, SJTC can no longer continue its logging operations because it now lacks the necessary tools and equipment to pursue its business operations.[16]

Moreover, SJTC's failure to report to the SEC what happened to the disposition of its personal properties and the status of the settlement of 30% claims as enumerated in its May 6, 2002 Decision justifies the dismissal of its petition pursuant to Section 4-26, Rule IV of the SEC Rules of Procedure on Corporate Rehabilitation.[17]

In sum, notwithstanding the lifting of the logging moratorium, the SEC avers that SJTC can no longer be revived and restored to its former successful operation and solvency given the foregoing considerations.

The SEC also avers that as to the inaction of the creditors of STJC, it cannot be construed as an acquiescence to await its full rehabilitation. What appears on record is that some of SJTC's creditors manifested their desire that SJTC be liquidated now so that their claims against it may be finally settled.[18]

Finally, the SEC posits that liquidating SJTC would work to its advantage because the accrued interest on all its debts would no longer accumulate. Its creditors would get a higher percentage for the settlement of their claims. Likewise, the early liquidation of SJTC could result in a big turnout of proceeds of the sale of its assets that could satisfy all the claims of its creditors.[19]

SJTC's Reply to SEC

SJTC replies that notwithstanding the sale of its machineries and equipment, the rehabilitation of SJTC remains viable and

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[16] SEC Memoranudum, *id.* at 3430-3431.

[17] *Id.* at 3431.

[18] *Id.* at 3432.

[19] *Id.* at 3434.

feasible. As stated in its petition for *certiorari* in the CA, SJTC's corporate affiliates have undertaken to infuse the necessary capital to jump-start its operations as soon as the logging ban would be lifted.

Conditions have dramatically changed with the August 15, 2005 Order of DENR categorically holding that the logging moratorium had already lapsed and that, accordingly, SJTC could resume operations immediately. The DENR extended the TLA by the period equivalent to the time that elapsed from May 31, 1989 until the promulgation of the said order. The TLA will, thus, subsist for another fourteen (14) years, or up to 2021.

The sole impediment to the rehabilitation of SJTC has, thus, been removed.

After the DENR issued its Order allowing SJTC to immediately resume operations, it adjusted its revised rehabilitation plan (1992) taking into account the present requirement to operate the logging concessions. Based on the Adjusted Rehabilitation Plan *(ARP)*, SJTC will need ₱70 million pesos to fully operate the logging operations in 1989. There is more than sufficient quantity of commercial timber to support the intended operations of SJTC.

Under the ARP, SJTC would be able to complete the set-up for its commercial operations within nine (9) months from resumption. During that period, SJTC would hire personnel, purchase new equipment, rehabilitate the roads, buildings and other infrastructure necessary for the commercial operations.

Commercial operations would begin on the second year of operation at an annual production of 56,000 cubic meters, which was only about 75% of the company's allowable harvest of 75,000 cubic meters.

Under the 2009 prevailing market, the average selling price for the first grade logs was estimated at ₱7,200.00 per cubic meter and ₱5,100.00 per cubic meter for the second grade logs.

Based on these projections, SJTC would be able to generate gross revenue in the amount of at least ₱342 million on the first year of commercial production, or within eighteen months from the date of the resumption of operation.

The remaining unpaid liabilities to the creditors, excluding corporate affiliates who agreed to be paid last, was estimated to be no more than ₱11 million. As of December 1991, the unpaid claims of creditors excluding that of the petitioners' corporate affiliates amounted to ₱14,369,531.27. Subsequently, the petitioners settled the claims of 22 creditors who opted to be paid 30% of their claims instead of waiting for the rehabilitation of SJTC. The aggregate value of the settled claims was ₱3,110,885.00.

Under the proposed ARP, SJTC would be able to pay its creditors, except its corporate affiliates, in full within 18 months from the time it would resume operation. This is an improvement from the old rehabilitation plan which provided payment to the creditors, excluding the affiliates, within 24 months from resumption of operations.

By contrast, if SJTC would be dissolved and liquidated, each creditor would receive no more than 14% of their principal claims.

SJTC argues that this has been the reason why the remaining creditors have not opposed the move to rehabilitate SJTC. The records will show that although there were initially four (4) out of 144 creditors who opposed the petition for rehabilitation at the SEC level, none of the creditors opposed the petition at the CA level. Before this Court, only the SSS, which is no longer a creditor, filed an opposition.[20]

Position of SSS

SSS agrees with the decision of the SEC and the CA in dismissing the petition for rehabilitation quoting the CA's decision that:

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[20] Reply Memorandum of SJTC; *id.* at 3440 to 3452.

"Rehabilitation of a corporation must be based on a viable and feasible plan; otherwise, the rehabilitation sought cannot be granted."[21]

The liability of the petitioners to SSS consists of the delinquent contribution for the SSS and ECC contributions of its employees, almost 50% of which represents deduction from the employees' salaries and, therefore, do not form part of the assets of the corporation. Hence, said liabilities should be settled ahead of the creditors. The 3% penalty imposed on the delayed remittance of contributions is enforced by law while the loan amortizations were deducted from the salary of its employees for remittance to the SSS.

SJTC'S Reply to SSS Memorandum

On May 23, 1997, SJTC submitted a proposal to avail itself of the SSS condonation program for its contribution delinquency in the amount of ₱1,394,672.00. In a letter dated April 6, 1998, the Employer Accounts Collection Department of the SSS favorably endorsed its proposal for approval, provided payment was made on or before May 23, 1998.

On May 22, 1998, SJTC paid its SSS obligations in full.

SSS did not question the fact of payment. By its silence, SSS has acknowledged that SJTC is no longer indebted to it,

The Court's Ruling

Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public.[22]

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[21] Memorandum of SSS; *id.* at 3321.

[22] *Pacific Wide Realty and Pacific Corporation v. Puerto Azul, Inc.*, G.R. No. 178768, November 25, 2009, 605 SCRA 503, citing *Negros Navigation*

Under the Rules of Procedure on Corporate Rehabilitation, "rehabilitation" is defined as the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the corporation continues as a going concern than if it is immediately liquidated.[23]

An indispensable requirement in the rehabilitation of a distressed corporation is the rehabilitation plan. Section 5 of the Interim Rules of Procedure on Corporate Rehabilitation provides the requisites thereof:

SEC. 5. Rehabilitation Plan. — The **rehabilitation** plan shall include (a) the desired business targets or goals and the duration and coverage of the **rehabilitation;** (b) the terms and conditions of such **rehabilitation** which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the **rehabilitation** plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest; (e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the **rehabilitation** plan.

"A successful rehabilitation usually depends on two factors: (1) a positive change in the business fortunes of the debtor, and (2) the willingness of the creditors and shareholders to

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Co., Inc. v. Court of Appeals, Special Twelfth Division, G.R. Nos. 163156 & 166845, December 10, 2008, 573 SCRA 434, 450, citing *New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City*, G.R. No. 165001, January 31, 2007, 513 SCRA 601; *Rubberworld (Phils.), Inc. v. NLRC*, G.R. No. 126773, April 14, 1999, 305 SCRA 721; *Ruby Industrial Corporation v. Court of Appeals*, G.R. Nos. 124185-87, January 20, 1998, 284 SCRA 445.

[23] *Id.*

arrive at a compromise agreement on repayment burdens, extent of dilution, *etc*. The debtor must demonstrate by convincing and compelling evidence that these circumstances exist or are likely to exist by the time the debtor submits his 'revised or substitute rehabilitation plan for the final approval of the court.'"[24]

Given the high standards that the Rules require, mere unsupported assertions by the debtor that "the parties are close to an agreement" or that "business is expected to pick up in the next several quarters" are not sufficient. Circumstances that might demonstrate in a convincing and compelling manner that the debtor could successfully be rehabilitated include the following:

a) the business fortunes of the debtor have actually improved since the petition was filed;

b) the general circumstances and forecast for the sector in which the debtor is operating supports the likelihood that the debtor's business will revive;

c) the debtor has taken concrete steps to improve its operating efficiency;

d) the debtor has obtained legally binding investment commitments from parties contingent on the approval of a rehabilitation plan;

e) the debtor has successfully addressed other factors that would increase the risk that the debtor's rehabilitation plan would fail;

f) the majority of the secured and unsecured creditors have expressly demonstrated a preference that the debtor be rehabilitated rather than liquidated and are willing to compromise on their claims to reach that result;

g) the debtor's shareholders have expressed a willingness to dilute their equity in connection with a debt equity swap.[25]

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[24] PHILJA, Justitia et Lex; Commercial Law; Handbook on Corporate Rehabilitation; Part III – The Rules and Applicable Jurisprudence in Question and Answer Form, Question No. 82; http://127.0.0.1:8080/rtc_corporate_jurisdiction.php

[25] *Id*.

Both the SEC and the CA had reasonable basis in deciding to terminate the rehabilitation proceedings of SJTC because of the lack of certainty that the logging ban would, in fact, be lifted. It is clear from the records that the proposed rehabilitation plan of the petitioners would depend entirely on the lifting of the logging ban either by the lifting of the moratorium on logging activities in Samar issued by the DENR, or by the enactment of a law on selective logging. Such lifting of the logging ban is indispensable to the rehabilitation of SJTC. If it would not be lifted, the company would have no source of income or revenues and no investor or creditor would come in to lend a hand in its resuscitation.

At the time of the promulgation of the CA decision, there was no certainty that the moratorium on logging activities in Samar would be lifted or a law on selective logging was forthcoming. There being no assurance, the CA was correct in sustaining the decision of the SEC to terminate the rehabilitation proceedings to protect the interest of all concerned, particularly the investors and the creditors. To have resolved otherwise would have been prejudicial to these entities as they would be made to wait indefinitely for something the likelihood of which was quite remote.

On August 15, 2005, however, an event supervened. With the lifting of the logging moratorium in Samar, an indispensable element for the possible rehabilitation of SJTC has been made a reality. Considering the extension granted by the DENR, the TLA of SJTC will expire on 2021, or nine (9) years from now. It appears from the proposed Adjusted Rehabilitation Plan,[26] that SJTC would only need a period of 24 months from the lifting of the logging moratorium within which to liquidate all of its liabilities, except those of its affiliates.

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[26] Annex "A" of Annex "G", Petition; *rollo,* p. 68.

The petitioners have claimed that as of December 31, 1988, the concession's virgin forest cover was 37,800 hectares, with commercial timber estimated at 2.25 million cubic meters.[27] Since the logging operations of SJTC had been stopped in 1989, the petitioners believe that the quantity of commercial timber has grown considerably. Thus, there is more than sufficient quantity of commercial timber to pay the obligations of SJTC to the creditors and to realize a reasonable return of investment.

The Court is of the considered view that SJTC should be given a second chance to recover and pay off its creditors. The only practical way of doing it is to resume the rehabilitation of SJTC which estimated its first year production upon resumption of operations at 29,000 cubic meters.[28] Thereafter, production is projected to rise to 60,000 cubic meters per year.[29] If the estimated selling price per cubic meter as of December 31, 1991 was ₱3,500.00[30] and between ₱5,000.00 and ₱6,000.00 in 2004,[31] there is no doubt that the price has again risen.

The Court is not unaware of the issuance of Executive Order (E.O.) No. 23 on February 1, 2011. E.O. No. 23 declares a Moratorium on the Cutting and Harvesting of Timber in the Natural and Residual Forests and Creates the Anti-Illegal Logging Task Force that will enforce the moratorium. It aims mainly at the promotion of intergeneration responsibility to protect the environment. As pronounced in the DENR website, however, *it does not impose a total log ban* in the country. What is being protected by the executive order is simply the natural

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[27] Petition, *id.* at 304.

[28] Revised Rehabilitation Plan, Annex "A" of Annex "G" of Petition; *id.* at 66.

[29] *Id.*

[30] *Id.*

[31] Petition, *id.* at 305.

forests and residual forests.[32] Section 2 thereof provides for a moratorium on the cutting and harvesting of timber in the natural and residual forests of the entire country. Timber companies, such as petitioner SJTC, may still be allowed to cut trees subject to the provisions thereof.

Thus, SJTC's rehabilitation appears highly feasible and the proceedings thereon should be revived. It should, therefore, be given an opportunity to be heard by the SEC to determine if it could maintain its corporate existence. For said reason, the case should be remanded to the SEC so that it could factor in the aforecited figures and claims of SJTC and assess whether or not SJTC could still recover. It appears from the figures that SJTC can generate sufficient income to pay all its obligations to all its creditors except, as the petitioners pledged, its corporate affiliates who allegedly represent more than 66% of the liabilities.

WHEREFORE, the September 22, 2003 Decision of the Court of Appeals and its January 29, 2004 Resolution are **REVERSED** and **SET ASIDE.** The case is hereby **REMANDED** to the SEC for further evaluation and appropriate action.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perlas-Bernabe, JJ.,* concur.

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[32] Bendijo, Lorelei. *E.O. 23: Renewing Hopes for Sustainable Forestry in the Philippines*. www.denr.gov.ph/index.php/news-and-features/features [visited on December 5, 2011]

THIRD DIVISION

[G.R. No. 180168. February 27, 2012]

MANILA INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **AVIA FILIPINAS INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; IN CONSTRUING A CONTRACT, THE PROVISIONS THEREOF SHOULD NOT BE READ IN ISOLATION, BUT IN RELATION TO EACH OTHER AND IN THEIR ENTIRETY SO AS TO RENDER THEM EFFECTIVE, HAVING IN MIND THE INTENTION OF THE PARTIES AND THE PURPOSE TO BE ACHIEVED; APPLIED.— Article 1306 of the Civil Code provides that "[t]he contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." Moreover, Article 1374 of the Civil Code clearly provides that "[t]he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." Indeed, in construing a contract, the provisions thereof should not be read in isolation, but in relation to each other and in their entirety so as to render them effective, having in mind the intention of the parties and the purpose to be achieved. In other words, the stipulations in a contract and other contract documents should be interpreted together with the end in view of giving effect to all. In the present case, the Court finds nothing repugnant to law with respect to the questioned provision of the contract of lease between petitioner and respondent. It is true that Article II, Paragraph 2.04 of the Contract of Lease states that "[a]ny subsequent amendment to Administrative Order No. 4, Series of 1982, which will effect a decrease or escalation of the monthly rental or impose new and additional fees and charges, including but not limited to government/MIAA circulars, rules and regulation to this effect, shall be deemed

incorporated herein and shall automatically amend this Contract insofar as the monthly rental is concerned." However, the Court agrees with the CA that the abovequoted provision of the lease contract should not be read in isolation. Rather, it should be read together with the provisions of Article VIII, Paragraph 8.13, which provide that "[a]ny amendment, alteration or modification of th[e] Contract shall not be valid and binding, unless and until made in writing and signed by the parties thereto." It is clear from the foregoing that the intention of the parties is to subject such amendment to the conformity of both petitioner and respondent. In the instant case, there is no showing that respondent gave his acquiescence to the said amendment or modification of the contract.

2. ID.; ID.; ID.; WHEN THE OBLIGEE ACCEPTS THE PERFORMANCE KNOWING ITS INCOMPLETENESS OR IRREGULARITY, AND WITHOUT EXPRESSING ANY PROTEST OR OBJECTION, THE OBLIGATION IS DEEMED FULLY COMPLIED WITH.— The situation is different with respect to the payments of the increased rental fee made by respondent beginning October 1994 because by then the amendment to the contract was made in writing through a bill sent by petitioner to respondent. The fact that respondent subsequently settled the said bill proves that it acceded to the increase in rental fee. The same may not be said with respect to the questioned rental fees sought to be recovered by petitioner between September 1991 and September 1994 because no bill was made and forwarded to respondent on the basis of which it could have given or withheld its conformity thereto. It may not be amiss to point out that during the abovementioned period, respondent continued to pay and petitioner kept on receiving the original rental fee of ₱6,580.00 without any reservations or protests from the latter. Neither did petitioner indicate in the official receipts it issued that the payments made by respondent constitute only partial fulfillment of the latter's obligations. Article 1235 of the Civil Code clearly states that "[w]hen the obligee accepts the performance knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with." For failing to make any protest or objection, petitioner is already estopped from seeking recovery of the amount claimed.

3. ID.; ID.; LEASE; FAILURE OF THE LESSOR TO RETURN THE RENTAL FEES PAID BY THE LESSEE DURING THE TIME THAT IT WAS DENIED ACCESS TO AND PREVENTED FROM USING THE LEASED PREMISES CONSTITUTE UNJUST ENRICHMENT; PRINCIPLE OF UNJUST ENRICHMENT, EXPLAINED.— [A]rticle 19 of the Civil Code provides that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." Article 22 of the same Code also states that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." In accordance with jurisprudence, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it. In the instant case, it is clear that petitioner failed to maintain respondent in the peaceful and adequate enjoyment of the leased premises by unjustifiably preventing the latter access thereto. Consequently, in accordance with Article 1658 of the Civil Code, respondent had no duty to make rent payments. Despite that, respondent still continued to pay the rental fees agreed upon in the original contract. Thus, it would be the height of inequity and injustice as well as unjust enrichment on the part of petitioner if the rental fees paid by respondent during the time that it was denied access to and prevented from using the leased premises be not returned to it.

4. ID.; DAMAGES; ATTORNEY'S FEES; MAY BE GRANTED ON GROUNDS OF JUSTICE AND EQUITY; AWARD OF ATTORNEY'S FEES, SUSTAINED.— With respect to attorney's fees, the Court finds no error on the part of the CA in sustaining such award on the ground that petitioner's act of denying respondent and its employees access to the leased premises has compelled respondent to litigate and incur expenses to protect its interest. The Court likewise agrees with the CA that, under the circumstances prevailing in the present case, attorney's fees may be granted on grounds of justice and equity.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Renato Coronado for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the reversal and setting aside of the June 19, 2007 Decision[1] and the October 11, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 79325. The assailed CA Decision affirmed with modification the Decision[3] dated March 21, 2003 of the Regional Trial Court (RTC) of Quezon City, Branch 224, in Civil Case No. Q-98-34395, while the CA Resolution denied petitioner's Motion for Reconsideration.

The factual and procedural antecedents are as follows:

In September 1990, herein petitioner Manila International Airport Authority (MIAA) entered into a contract of lease with herein respondent Avia Filipinas International Corporation (AFIC), wherein MIAA allowed AFIC to use specific portions of land as well as facilities within the Ninoy Aquino International Airport exclusively for the latter's aircraft repair station and chartering operations. The contract was for one (1) year, beginning September 1, 1990 until August 31, 1991, with a monthly rental of ₱6,580.00.

In December 1990, MIAA issued Administrative Order No. 1, Series of 1990, which revised the rates of dues, charges, fees or assessments for the use of its properties, facilities and services

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Mariano C. del Castillo (now a member of this Court) and Romeo F. Barza, concurring; Annex "A" to Petition, *rollo*, pp. 34-44.

[2] Annex "B" to Petition, *id.* at 45-46.

[3] Penned by Judge Emilio L. Leachon, Jr.; *id.* at 111-115.

within the airport complex. The Administrative Order was made effective on December 1, 1990. As a consequence, the monthly rentals due from AFIC was increased to ₱15,996.50. Nonetheless, MIAA did not require AFIC to pay the new rental fee. Thus, it continued to pay the original fee of ₱6,580.00.

After the expiration of the contract, AFIC continued to use and occupy the leased premises giving rise to an implied lease contract on a monthly basis. AFIC kept on paying the original rental fee without protest on the part of MIAA.

Three years after the expiration of the original contract of lease, MIAA informed AFIC, through a billing statement dated October 6, 1994, that the monthly rental over the subject premises was increased to ₱15,966.50 beginning September 1, 1991, which is the date immediately following the expiration of the original contract of lease. MIAA sought recovery of the difference between the increased rental rate and the original rental fee amounting to a total of ₱347,300.50 covering thirty-seven (37) months between September 1, 1991 and September 31, 1994. Beginning October 1994, AFIC paid the increased rental fee. However, it refused to pay the lump sum of ₱347,300.50 sought to be recovered by MIAA. For the continued refusal of AFIC to pay the said lump sum, its employees were denied access to the leased premises from July 1, 1997 until March 11, 1998. This, notwithstanding, AFIC continued paying its rentals. Subsequently, AFIC was granted temporary access to the leased premises.

AFIC then filed with the RTC of Quezon City a Complaint for damages with injunction against MIAA and its General Manager seeking uninterrupted access to the leased premises, recovery of actual and exemplary damages, refund of its monthly rentals with interest at the time that it was denied access to the area being rented as well as attorney's fees.

In its Answer with Counterclaim, MIAA contended that under its lease contract with AFIC, MIAA is allowed to either increase or decrease the monthly rental; AFIC has rental arrears in the amount of ₱347,300.50; AFIC was wrong in claiming that MIAA took the law into its own hands in denying AFIC and its employees access to the leased premises, because under the lease contract,

in case of failure on the part of AFIC to pay rentals for at least two (2) months, the contract shall become automatically terminated and canceled without need of judicial action or process and it shall be lawful for MIAA or any person or persons duly authorized on its behalf to take possession of the property either by padlocking the premises or posting its guards to prevent the entry of any person. MIAA prayed for the award of exemplary damages as well as attorney's fees and litigation expenses.

On March 21, 2003, the RTC rendered its Decision, the dispositive portion of which reads as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff [AFIC] and as against the defendants [MIAA] ordering the latter to pay plaintiff the following:
>
> a) the amount of ₱2,000,000.00 as actual damages;
> b) the amount of ₱200,000.00 as exemplary damages;
> c) to refund the monthly rental payments beginning July 1, 1997 up [to] March 11, 1998 with interest at twelve (12%) percent;
> d) the amount of ₱100,000.00 as attorney's fees;
> e) cost of suit.
>
> IT IS SO ORDERED.[4]

MIAA filed an appeal with the CA contending that the RTC erred in: (1) finding that MIAA is not entitled to apply the increase in rentals as against AFIC; (2) finding that MIAA is not entitled to padlock the leased premises or post guards to prevent entry of AFIC therein; and (3) awarding actual and exemplary damages and attorney's fees.

On June 19, 2007, the CA rendered its assailed Decision, the dispositive portion of which reads, thus:

> WHEREFORE**,** premises considered, the decision of the Regional Trial Court of Quezon City in Civil Case No. Q-98-34395 is hereby AFFIRMED with MODIFICATION. The awards of actual/compensatory damages and exemplary damages are deleted. The refund of monthly rental payments from July 1, 1997 to March 11, 1998 shall earn

[4] Records, p. 178.

interest of six percent (6%) per annum from the date of the filing of the complaint until the finality of this decision. An interest of twelve percent (12%) per annum shall be imposed upon any unpaid balance from such finality until the judgment amount is fully satisfied.

The award of attorney's fees stands.

SO ORDERED.[5]

MIAA filed a Motion for Reconsideration, but the CA denied it *via* its Resolution dated October 11, 2007.

Hence, the present petition for review on *certiorari* raising the following issues:

WHETHER THE HONORABLE COURT OF APPEALS CORRECTLY INTERPRETED THE PROVISIONS OF THE LEASE CONTRACT IN LINE WITH THE PROVISIONS OF THE CIVIL CODE AND EXISTING JURISPRUDENCE ON CONTRACTS.

WHETHER THE PRINCIPLE OF UNJUST ENRICHMENT IS APPLICABLE TO THE INSTANT CASE.

WHETHER RESPONDENT IS ENTITLED TO ATTORNEY'S FEES.[6]

Petitioner MIAA contends that, as an administrative agency possessed of quasi-legislative and quasi-judicial powers as provided for in its charter, it is empowered to make rules and regulations and to levy fees and charges; that its issuance of Administrative Order No. 1, Series of 1990 is pursuant to the exercise of the abovementioned powers; that by signing the lease contract, respondent AFIC already agreed and gave its consent to any further increase in rental rates; as such, the provision of the lease contract being cited by the CA which provides that "any amendment, alteration or modification [of the lease contract] shall not be valid and binding, unless and until made in writing and signed by the parties thereto" is deemed complied with because respondent already consented to having any subsequent amendments to Administrative Order No. 1

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[5] *Rollo,* pp. 43-44.

[6] *Id.* at 22-23.

automatically incorporated in the lease contract; that the above-quoted provision should not also be interpreted as having the effect of limiting the authority of MIAA to impose new rental rates in accordance with its authority under its charter.

Petitioner also argues that it is not guilty of unjust enrichment when it denied respondent access to the leased premises, because there is nothing unlawful in its act of imposing sanctions against respondent for the latter's failure to pay the increased rental.

Lastly, petitioner avers that respondent is not entitled to attorney's fees, considering that it was not compelled to litigate and incur expenses to protect its interest by reason of any unjustified act on the part of petitioner. Petitioner reiterates that it was merely exercising its right as the owner and administrator of the leased property and, as such, its acts may not be deemed unwarranted.

The petition lacks merit.

Article 1306 of the Civil Code provides that "[t]he contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

Moreover, Article 1374 of the Civil Code clearly provides that "[t]he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." Indeed, in construing a contract, the provisions thereof should not be read in isolation, but in relation to each other and in their entirety so as to render them effective, having in mind the intention of the parties and the purpose to be achieved.[7] In other words, the stipulations in a contract and other contract documents should be interpreted together with the end in view of giving effect to all.[8]

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[7] *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*, G.R. Nos. 169408 & 170144, April 30, 2008, 553 SCRA 541, 559.

[8] *Id.*

In the present case, the Court finds nothing repugnant to law with respect to the questioned provisions of the contract of lease between petitioner and respondent. It is true that Article II, Paragraph 2.04 of the Contract of Lease states that "[a]ny subsequent amendment to Administrative Order No. 4, Series of 1982, which will effect a decrease or escalation of the monthly rental or impose new and additional fees and charges, including but not limited to government/MIAA circulars, rules and regulation to this effect, shall be deemed incorporated herein and shall automatically amend this Contract insofar as the monthly rental is concerned."[9] However, the Court agrees with the CA that the abovequoted provision of the lease contract should not be read in isolation. Rather, it should be read together with the provisions of Article VIII, Paragraph 8.13, which provide that "[a]ny amendment, alteration or modification of th[e] Contract shall not be valid and binding, unless and until made in writing and signed by the parties thereto."[10] It is clear from the foregoing that the intention of the parties is to subject such amendment to the conformity of both petitioner and respondent. In the instant case, there is no showing that respondent gave its acquiescence to the said amendment or modification of the contract.

The situation is different with respect to the payments of the increased rental fee made by respondent beginning October 1994 because by then the amendment to the contract was made in writing through a bill sent by petitioner to respondent.[11] The fact that respondent subsequently settled the said bill proves that he acceded to the increase in rental fee. The same may not be said with respect to the questioned rental fees sought to be recovered by petitioner between September 1991 and September 1994 because no bill was made and forwarded to respondent on the basis of which it could have given or withheld its conformity thereto.

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[9] Exhibit "A", folder of exhibits for the plaintiff, p. 2.

[10] *Id.* at 6.

[11] See Exhibit "C", folder of exhibits for the plaintiff, p. 100.

It may not be amiss to point out that during the abovementioned period, respondent continued to pay and petitioner kept on receiving the original rental fee of ₱6,580.00 without any reservations or protests from the latter.[12] Neither did petitioner indicate in the official receipts it issued that the payments made by respondent constitute only partial fulfillment of the latter's obligations. Article 1235 of the Civil Code clearly states that "[w]hen the obligee accepts the performance knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with." For failing to make any protest or objection, petitioner is already estopped from seeking recovery of the amount claimed.

Anent the second issue, since it has been established that petitioner has no legal basis in requiring respondent to pay additional rental fees from September 1, 1991 to September 30, 1994, it, thus, follows that petitioner's act of denying respondent and its employees access to the leased premises from July 1, 1997 until March 11, 1998, by reason of respondent's non-payment of the said additional fees, is likewise unjustified.

Under Paragraph 3, Article 1654 of the Civil Code, the lessor is obliged "[t]o maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract."

Moreover, Article 1658 of the same Code provides that "[t]he lessee may suspend the payment of the rent in case the lessor fails to make the necessary repairs or to maintain the lessee in peaceful and adequate enjoyment of the property leased."

Furthermore, as correctly cited by the RTC, Article 19 of the Civil Code provides that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

Article 22 of the same Code also states that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return

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[12] See Exhibits "B-12"-"B-45", *id.* at 22-57.

the same to him." In accordance with jurisprudence, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.[13] The principle of unjust enrichment essentially contemplates payment when there is no duty to pay, and the person who receives the payment has no right to receive it.[14]

In the instant case, it is clear that petitioner failed to maintain respondent in the peaceful and adequate enjoyment of the leased premises by unjustifiably preventing the latter access thereto. Consequently, in accordance with Article 1658 of the Civil Code, respondent had no duty to make rent payments. Despite that, respondent still continued to pay the rental fees agreed upon in the original contract. Thus, it would be the height of inequity and injustice as well as unjust enrichment on the part of petitioner if the rental fees paid by respondent during the time that it was denied access to and prevented from using the leased premises be not returned to it.

With respect to attorney's fees, the Court finds no error on the part of the CA in sustaining such award on the ground that petitioner's act of denying respondent and its employees access to the leased premises has compelled respondent to litigate and incur expenses to protect its interest.[15] The Court likewise agrees with the CA that, under the circumstances prevailing in the present case, attorney's fees may be granted on grounds of justice and equity.[16]

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[13] *Arturo Sarte Flores v. Spouses Enrico L. Lindo, Jr. and Edna C. Lindo*, G.R. No. 183984, April 13, 2011; *Development Bank of the Philippines v. Medrano*, G.R. No. 167004, February 7, 2011, 641 SCRA 559, 569; *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, January 23, 2006, 479 SCRA 404, 412; *Reyes v. Lim*, G.R. No. 134241, August 11, 2003, 408 SCRA 560, 570.

[14] *Land Bank of the Philippines v. Ong*, G.R. No. 190755, November 24, 2010, 636 SCRA 266, 279.

[15] Civil Code, Art. 2208.

[16] *Id*.

Finally, the Court deems it proper to reiterate the provisions of Supreme Court Administrative Circular No. 10-2000 which enjoins all judges of lower courts to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units.

WHEREFORE, the petition is **DENIED**. The June 19, 2007 Decision and October 11, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 79325 are **AFFIRMED**. The Regional Trial Court of Quezon City, Branch 224 is **ORDERED** to comply with the directives of Supreme Court Administrative Circular No. 10-2000.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 182197. February 27, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **TEOFILO HONRADO and ROMULO HONRADO,** *appellants.*

SYLLABUS

1. CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425); ILLEGAL SALE OF MARIJUANA; ESSENTIAL ELEMENTS; PRESENT.— A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. The essential elements to be established in the prosecution of illegal sale of marijuana are as follows: (1) the identity of the buyer and the seller, the

object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The evidence on record showed the presence of all these elements.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE COURT RELIES ON THE TRIAL COURT'S ASSESSMENT OF THE PROSECUTION WITNESSES' CREDIBILITY, ABSENT ANY SHOWING THAT CERTAIN FACTS OF WEIGHT AND SUBSTANCE, BEARING ON THE ELEMENTS OF THE CRIME, HAVE BEEN OVERLOOKED, MISUNDERSTOOD, OR MISAPPLIED.— We rely on the trial court's assessment of the prosecution witnesses' credibility, absent any showing that certain facts of weight and substance, bearing on the elements of the crime, have been overlooked, misunderstood, or misapplied. We point out that no improper motive was ever successfully established showing why the witnesses would falsely testify against the appellants. The testimonies of the prosecution witnesses, therefore, clearly established that the sale of marijuana took place between the appellants and the poseur-buyer. The delivery of the illicit drug to PO3 Garcia and the receipt by the appellants of the marked money successfully consummated the buy-bust transaction.

3. CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425); ILLEGAL SALE OF MARIJUANA; CHAIN OF CUSTODY REQUIREMENT; THE FACT THAT THE SUBSTANCE SEIZED DURING THE BUY-BUST OPERATION IS THE SAME ITEM OFFERED IN COURT AS EXHIBIT MUST ALSO BE ESTABLISHED WITH THE SAME DEGREE OF CERTITUDE.— We also find that the totality of the presented evidence leads to an unbroken chain of custody of the confiscated item from the appellants. Indeed, in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti*, is most material; it is vital that the identity of the prohibited drug be proved with moral certainty. The fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit must

also be established with the same degree of certitude. It is in this respect that the chain of custody requirement performs its function. It ensures that unnecessary doubts concerning the identity of the evidence are removed. x x x. [T]he prosecution established the crucial link in the chain of custody of the confiscated items from the time they were first seized until they were brought in the laboratory for examination and presented in court. The integrity and the evidentiary value of the marijuana seized from the appellants were duly proven not to have been compromised.

4. REMEDIAL LAW; EVIDENCE; DENIAL; INHERENTLY A WEAK DEFENSE AND CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION BY THE PROSECUTION; DEFENSE OF FRAME-UP VIEWED WITH DISFAVOR.— [W]e find unmeritorious the appellants' defenses of denial, frame-up, and extortion. Denial is inherently a weak defense and cannot prevail over the positive identification by the prosecution. Negative and self-serving, denial deserves no weight in law when unsubstantiated by clear and convincing evidence. Corollarily, we have invariably viewed the defense of frame-up with disfavor, for it can easily be concocted and, like denial, is a common and standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We, likewise, find the appellants' charge of extortion to be highly suspect, considering that the appellants did not file any criminal and/or administrative cases against the concerned police officers.

5. CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425); ILLEGAL SALE OF MARIJUANA; PROPER PENALTY.— Section 4, Article II, in relation to Section 20, of R.A. No. 6425, as amended by R.A. No. 7659, provides: Section 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs*. – The penalty of ***reclusion perpetua*** **to death and a fine from five hundred thousand pesos to ten million pesos** shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. x x x Section 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments*

> *of the Crime*. – The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities: x x x 5. **750 grams or more of indian hemp or marijuana**[.] In the present case, the appellants were caught selling one block of marijuana weighing 1,040 grams. Accordingly, we affirm the ruling of the RTC and the CA imposing the penalty of *reclusion perpetua* and a fine of ₱1,000,000.00 as these are the penalties provided for by law.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BRION, *J.*:

We decide the appeal, filed by Teofilo Honrado and Romulo Honrado (*appellants*), from the September 21, 2007 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 01432. The CA decision affirmed with modification the February 21, 2000 decision[2] of the Regional Trial Court (*RTC*), Branch 53, Rosales, Pangasinan, finding the appellants guilty beyond reasonable doubt of violation of Sections 4[3] and 8,[4] Article II of Republic Act (*R.A.*) No. 6425, otherwise known as The Dangerous Drugs Act of 1972.

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[1] *Rollo*, pp. 2-21; penned by Associate Justice Hakim S. Abdulwahid, and concurred in by Associate Justice Rodrigo V. Cosico and Associate Justice Apolinario D. Bruselas, Jr.

[2] CA *rollo*, pp. 21-27.

[3] Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs.

[4] Possession or Use of Prohibited Drugs.

The evidence for the prosecution showed that sometime in June 1995, SPO3 Rodolfo de Guzman of the Philippine National Police (*PNP*) Narcotics Command, Urdaneta, Pangasinan, received information from a concerned citizen about the illegal drug activities in *Barangay* Carmen East, Rosales, Pangasinan. Acting on this information, SPO3 De Guzman directed SPO3 Ruperto Galliguez and PO3 Rolando Garcia to conduct a surveillance in *Barangay* Carmen East.[5] SPO3 Galliguez and PO3 Garcia did as instructed, and then reported that two persons, known as *alias* "Temmy" and *alias* "Whity," were engaged in drug pushing in the area. Afterwards, SPO3 De Guzman formed an entrapment team composed of himself, SPO3 Galliguez, PO3 Garcia, SPO2 Honorato Natividad, SPO1 Flash Ferrer, and PO2 Laudencio Gallano.[6]

At around 4:30 a.m. of June 13, 1995, the entrapment team, together with the informant, went to the Carmen Police Sub-Station to coordinate with the local police and then proceeded to *Barangay* Carmen East to conduct the buy-bust operation.[7] When they arrived there, PO3 Garcia and the informant went to a vacant lot, while the other members of the team strategically positioned themselves around the area. The informant went to a cemented dike and contacted appellants Romulo and Teofilo. When they returned to the vacant lot, the informant introduced PO3 Garcia to the appellants as a buyer of marijuana. The appellants instructed PO3 Garcia to wait.[8] When the appellants returned, Romulo handed one block of marijuana dried leaves wrapped in a newspaper to PO3 Garcia. PO3 Garcia gave one ₱500.00 bill and five ₱100.00 bills to Romulo, who, in turn, handed them to Teofilo. PO3 Garcia then made the prearranged signal to his companions. Immediately after, the other members of the buy-bust team approached the appellants, identified themselves as police agents, and arrested the appellants. SPO3

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[5] TSN, May 8, 1996, pp. 8-9.

[6] *Id.* at 10-11.

[7] *Id.* at 11-13.

[8] *Id.* at 14-16; TSN, January 4, 1999, pp. 7-8.

Galliguez searched Teofilo and recovered the marked money from his back pocket.[9]

The appellants told the police that there were other blocks of marijuana hidden in their house. SPO2 Natividad and SPO3 Galliguez accompanied the appellants to Romulo's house; the appellants entered the house while the police waited outside. The appellants got four blocks of marijuana from the house, placed them in a bag, and handed them over to SPO3 Galliguez.[10] Thereafter, the police brought the appellants and the seized items to the police station for investigation.[11] At the police station, the police marked the seized items[12] and made the corresponding *Receipt of Property Seized*.[13]

The appellants, for their part, interposed the defenses of denial, extortion, and frame-up.

The prosecution charged the appellants with violation of Sections 4 and 8 of R.A. No. 6425, as amended, before the RTC. The RTC found the appellants guilty beyond reasonable doubt of the crimes charged, and sentenced them to suffer the penalty of *reclusion perpetua* for each offense. It also ordered them to pay a ₱1 million fine.[14]

The appellants appealed to the CA, docketed as CA-G.R. CR-H.C. No. 01432. The CA, in its decision of September 21, 2007, affirmed the appellants' conviction for illegal sale of marijuana under Section 4 of R.A. No. 6425, as amended, but acquitted them for illegal possession of marijuana under Section 8 of this law on the ground of reasonable doubt.

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[9] TSN, May 8, 1996, pp. 18-20; TSN, January 4, 1999, pp. 9-10, 21.

[10] TSN, May 8, 1996, p. 24; TSN, January 4, 1999, pp. 11-12.

[11] TSN, May 8, 1996, pp. 24-25.

[12] TSN, January 4, 1999, pp. 24-25.

[13] TSN, May 8, 1996, p. 30; Records, p. 6.

[14] *Supra* note 2.

The CA held that PO3 Garcia positively identified the appellants as the persons who gave him one block of marijuana in exchange for ₱1,000.00; his testimony was corroborated by SPO3 De Guzman, SPO2 Natividad and SPO2 Galliguez. It added that the seized specimens tested positive for marijuana.

The CA also ruled that the subsequent search and confiscation of the buy-bust money from Teofilo were justified because they were made as incidents to a lawful arrest. The appellate court likewise did not give credence to the appellants' claim of extortion for their failure to present any evidence to prove this allegation. The CA, however, acquitted the appellants for violation of illegal possession of marijuana under Section 8 of R.A. No. 6425 due to serious inconsistencies in the testimonies of the police on how they were able to get hold of the four additional blocks of marijuana.[15]

In their brief,[16] the appellants claim that the courts *a quo* erred in giving credence to the inconsistent and incredible testimonies of the prosecution witnesses. They further allege that it was improbable for them to voluntarily inform the police of the location of the four blocks of marijuana.

For the State, the Office of the Solicitor General maintains that the prosecution was able to prove the appellants' guilt beyond reasonable doubt.[17]

THE COURT'S RULING

We **deny** the appeal and affirm the appellants' conviction for illegal sale of 1,040 grams of marijuana under Section 4, Article II of R.A. No. 6425, as amended.

A buy-bust operation is a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan.[18] The

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[15] *Supra* note 1.

[16] CA *rollo*, pp. 59-74.

[17] *Id.* at 87-112.

[18] *Cruz v. People*, G.R. No. 164580, February 6, 2009, 578 SCRA 147, 152.

essential elements to be established in the prosecution of illegal sale of marijuana are as follows: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor.[19] What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[20]

The evidence on record showed the presence of all these elements. The witnesses for the prosecution successfully proved that a buy-bust operation took place and the block of marijuana subject of the sale was brought to, and duly identified in, court. PO3 Garcia, the poseur-buyer, positively identified the appellants as the persons who sold to him one block of marijuana dried leaves wrapped in a newspaper in exchange for the sum of ₱1,000.00. PO3 Garcia's testimony was corroborated on material points by his team leader, SPO3 De Guzman, SPO3 Galliguez, and SPO2 Natividad. PNP Forensic Chemist Police Supt. Theresa Ann Cid examined the items seized and found them to be positive for marijuana.

We rely on the trial court's assessment of the prosecution witnesses' credibility, absent any showing that certain facts of weight and substance, bearing on the elements of the crime, have been overlooked, misunderstood, or misapplied. We point out that no improper motive was ever successfully established showing why the witnesses would falsely testify against the appellants. The testimonies of the prosecution witnesses, therefore, clearly established that the sale of marijuana took place between the appellants and the poseur-buyer. The delivery of the illicit drug to PO3 Garcia and the receipt by the appellants of the marked money successfully consummated the buy-bust transaction.[21]

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[19] *People of the Philippines v. Romeo Dansico y Monay, et al.*, G.R. No. 178060, February 23, 2011.

[20] See *People v. Lascano*, G.R. No. 172605, November 22, 2010, 635 SCRA 551, 559.

[21] *Id.* at 562.

Aside from the witnesses' testimonies, the fact that an actual buy-bust operation took place was also evidenced by the presented documentary evidence consisting of the marked moneys used in the operation; the Booking Sheet and Arrest Report against the appellants prepared by SPO3 De Guzman; and the Joint Affidavit of Arrest executed by the members of the entrapment team.

We also find that the totality of the presented evidence leads to an unbroken chain of custody of the confiscated item from the appellants. Indeed, in every prosecution for illegal sale of prohibited drugs, the presentation in evidence of the seized drug, as an integral part of the *corpus delicti*, is most material; it is vital that the identity of the prohibited drug be proved with moral certainty. The fact that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit must also be established with the same degree of certitude. It is in this respect that the chain of custody requirement performs its function. It ensures that unnecessary doubts concerning the identity of the evidence are removed.[22]

In the present case, the records reveal that after PO3 Garcia received the block of marijuana from Romulo, he handed it to SPO3 De Guzman. Afterwards, the police brought the appellants and the seized items to the police station, and marked the confiscated items. SPO3 De Guzman listed and recorded the items confiscated, and made the corresponding *Receipt of Property Seized*. This document was signed by the appellants, SPO3 De Guzman, SPO3 Galliguez, and SPO2 Natividad. Thereafter, SPO3 De Guzman made a request for laboratory examination addressed to the Regional Chief of the PNP Crime Laboratory in San Fernando, La Union. SPO1 Ferrer brought the request and the seized items to the PNP Crime Laboratory, where they were received by SPO4 Carlos Tampos, Jr., in the presence of P/Insp. Cid. Notably, P/Insp. Cid confirmed that the submitted specimen contained markings when it was forwarded to the

[22] See *Ruel Ampatuan "Alias Ruel" v. People of the Philippines*, G.R. No. 183676, June 22, 2011.

crime laboratory. P/Insp. Cid placed her initials on the newspaper containing the bundle of marijuana, and again marked this bundle as evidence "A". She then examined the samples she took from the submitted specimen, and found them positive for marijuana. Significantly, P/Insp. Cid identified the bundle of marijuana in court to be the same bundle submitted to her for examination.

In fine, the prosecution established the crucial link in the chain of custody of the confiscated items from the time they were first seized until they were brought in the laboratory for examination and presented in court. The integrity and the evidentiary value of the marijuana seized from the appellants were duly proven not to have been compromised.

Finally, we find unmeritorious the appellants' defenses of denial, frame-up, and extortion. Denial is inherently a weak defense and cannot prevail over the positive identification by the prosecution. Negative and self-serving, denial deserves no weight in law when unsubstantiated by clear and convincing evidence. Corollarily, we have invariably viewed the defense of frame-up with disfavor, for it can easily be concocted and, like denial, is a common and standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act.[23] We, likewise, find the appellants' charge of extortion to be highly suspect, considering that the appellants did not file any criminal and/or administrative cases against the concerned police officers.

The Penalty

Section 4, Article II, in relation to Section 20, of R.A. No. 6425, as amended by R.A. No. 7659, provides:

> Section 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs*. – The penalty of ***reclusion perpetua*** **to death and a fine from five hundred thousand pesos to ten million pesos** shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another,

[23] See *People v. Dulay*, 468 Phil. 56 (2004).

distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.

x x x x x x x x x

Section 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime*. – The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

x x x x x x x x x

5. **750 grams or more of indian hemp or marijuana**[.] [emphases ours.]

In the present case, the appellants were caught selling one block of marijuana weighing 1,040 grams. Accordingly, we affirm the ruling of the RTC and the CA imposing the penalty of *reclusion perpetua* and a fine of ₱1,000,000.00 as these are the penalties provided for by law.

WHEREFORE, in light of all the foregoing, we hereby **AFFIRM** the September 21, 2007 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01432.

SO ORDERED.

Carpio (Chairperson), Perez, *Sereno*, and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 182650. February 27, 2012]

TOMAS K. CHUA, *petitioner, vs.* **WESTMONT BANK, REGISTRAR OF DEEDS OF PARAÑAQUE CITY, REGISTRAR OF DEEDS OF PASAY CITY, NOTARY PUBLIC MANUEL FONACIER, and JOHN DOES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; A NOTARIZED INSTRUMENT IS ADMISSIBLE IN EVIDENCE WITHOUT FURTHER PROOF OF ITS DUE EXECUTION, IS CONCLUSIVE AS TO THE TRUTHFULNESS OF ITS CONTENTS, AND HAS IN ITS FAVOR THE PRESUMPTION OF REGULARITY, ABSENT CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY.— The court has held that one who denies the due execution of a deed where one's signature appears has the burden of proving that contrary to the recital in the *jurat*, one never appeared before the notary public and acknowledged the deed to be a voluntary act. We have also held that a notarized instrument is admissible in evidence without further proof of its due execution, is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity. In this case, the Deed of Real Estate Mortgage involving TCT Nos. 87878 and 87876 was notarized and acknowledged before notary public Fina Dela Cuesta-Tantuico. Being a public document, it enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be clear and convincing evidence. Absent such evidence, as in this case, the presumption must be upheld.

2. ID.; ID.; WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE PARTIES AND NOT REVIEWABLE BY THE SUPREME COURT.— Petitioner likewise asserts that it was physically impossible

for him to execute and acknowledge the Deed of Real Estate Mortgage before notary public Fina Dela Cuesta-Tantuico because on the supposed date of execution and notarization, he was in Malaysia with his wife. However, as correctly pointed out by the CA, it can be gathered from the testimony of petitioner that he left the Philippines in the afternoon of July 10, 1998 and arrived in Malaysia an hour later. The CA noted that petitioner was in the Philippines from morning until early afternoon on said date, which means that he still had time to attend to his business transactions before his flight to Malaysia. Thus, we find no error on the part of the CA in concluding that petitioner could have signed the Deed of Real Estate Mortgage before he left for Malaysia on said date. We note that these issues raised by petitioner are factual in nature and calls for a review of the evidence already considered in the proceedings below. The evaluation and calibration of the evidence necessarily involves consideration of factual issues—an exercise that is not appropriate for a petition for review on *certiorari* under Rule 45. As a general rule, only errors of law are reviewable by the Supreme Court on petitions for review on *certiorari*. The rule finds more stringent application where the CA upholds the findings of fact of the trial court. In such instance, as in this case, this Court is generally bound to adopt the facts as determined by the lower courts. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court.

3. ID.; ID.; BURDEN OF PROOF; IN CIVIL CASES, THE PARTY HAVING THE BURDEN OF PROOF MUST ESTABLISH HIS CASE BY A PREPONDERANCE OF EVIDENCE; "PREPONDERANCE OF EVIDENCE," EXPLAINED.— [I]n civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto. In the present case, petitioner failed to overcome the burden of proving his claim by preponderance of evidence that the questioned Deed is null and void.

APPEARANCES OF COUNSEL

Bernas Law Office for petitioner.
Corpuz Ejercito Macasaet & Rivera Law Offices for Westmont Bank.

D E C I S I O N

VILLARAMA, JR., *J.*:

This Rule 45 petition filed by petitioner Tomas K. Chua seeks to annul and set aside the January 24, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 86882, which affirmed the Decision[2] of the Regional Trial Court (RTC), Branch 257, of Parañaque City in Civil Case No. 99-0190. Also assailed is the appellate court's Resolution[3] dated April 22, 2008, denying petitioner's motion for reconsideration.

The facts follow:

This case stemmed from a petition for cancellation of mortgage[4] filed by petitioner before the RTC of Parañaque City against respondents Westmont Bank, the Registrar of Deeds of Parañaque City, the Registrar of Deeds of Pasay City, Notary Public Manuel S. Fonacier and several John Does.

Petitioner alleged that on October 21, 1996, he pre-signed a Deed of Real Estate Mortgage in favor of Westmont Bank and submitted to it his owner's duplicate copies of Transfer Certificate of Title (TCT) Nos. 87878 and 87876 in anticipation of a grant of a loan to T.C. Builders Suppliers, Inc. When the loan did not materialize because petitioner and Westmont Bank could not agree on the interest rate to be applied, petitioner assumed

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[1] *Rollo*, pp. 42-52. Penned by Associate Justice Myrna Dimaranan-Vidal with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring.

[2] *Id.* at 102-109. Penned by Judge Rolando G. How.

[3] *Id.* at 53.

[4] Records, Vol. I, pp. 2-7.

that Westmont Bank would just cancel the pre-signed blank Deed of Real Estate Mortgage and return the duplicate originals of the titles. But the bank did neither. Instead, it foreclosed the mortgaged properties and bought the properties in the ensuing public auction held on September 10, 1998, for which it was issued a Certificate of Sale. Thus, petitioner prayed that the Real Estate Mortgage and the Certificate of Sale issued by Notary Public Manuel S. Fonacier be declared null and void.

In its Answer,[5] Westmont Bank averred that petitioner applied for a letter of credit to import one set of plywood-making machinery. The bank extended the credit accommodation to petitioner, and accordingly the machinery was shipped and released to petitioner under a Trust Receipt Agreement issued in favor of the bank. Later, when petitioner had difficulty paying for the machinery, he requested for an extension of time to settle his obligations and simultaneously mortgaged TCT Nos. 87878 and 87876 in favor of Westmont Bank. Upon execution of the Deed of Real Estate Mortgage and the delivery of the subject TCTs to Westmont Bank, Westmont Bank agreed to extend the term of the Trust Receipt obligation until November 3, 1997. But despite the extended term, petitioner still failed to settle his obligation. Hence, the mortgaged properties were extrajudicially foreclosed and sold at public auction to Westmont Bank as the highest bidder.

At the trial, petitioner testified that he is the owner of the two parcels of land covered by TCT Nos. 87878 and 87876. He also declared that he is the owner of T.C. Builders Suppliers, Inc.

Sometime in October 1996, he applied for a personal loan with Westmont Bank in the amount of ₱6,000,000. He was required to sign a blank Deed of Real Estate Mortgage and to submit the owner's duplicate copies of his two titles for evaluation purposes. He averred that he did as he was told although no receipt was given for the titles. Then, sometime in 1997, he came back to the bank to retrieve his titles, thinking that his loan was not going to be approved. Mr. So Leng Ton, a bank

[5] *Id.* at 25-29.

officer, however, told him that the titles were kept by the bank in anticipation of the approval of the loan. Later, he found out that the subject properties were foreclosed and sold at public auction and a Certificate of Sale issued to Westmont Bank.[6]

On cross-examination, petitioner claimed that he signed a blank Deed of Real Estate Mortgage when he applied for his personal loan with the bank for T.C. Builders Suppliers, Inc., but he did not read the provisions of the deed before signing it. He also averred that he did not know if his loan application was approved. He added that he did not sign a promissory note or demanded in writing the return of his TCTs. Further, he declared that he did not appear before a notary public on July 10, 1998 to acknowledge the Deed of Real Estate since he was in Malaysia on said date as shown in his passport.[7] Petitioner likewise claimed that sometime in October 1996, he applied for a domestic letter of credit for ₱4,500,000 in the name of T.C. Builders Suppliers, Inc., but he did not receive any amount from the bank intended for T.C. Builders.[8]

For its part, Westmont Bank presented as witness Mr. Noe Reyes, a bank executive. Reyes testified that on October 23, 1996, T.C. Builders Suppliers, Inc. through petitioner, applied for a Domestic Letter of Credit in the amount of ₱4,500,000 to purchase plywood-making machinery from Cotabato Timberland Company. The bank approved the application and issued a Domestic Letter of Credit. Accordingly, the machinery was delivered to T.C. Builders and received by petitioner on November 5, 1996. Petitioner thereafter requested that he be allowed to pay his loan in installments as follows: by partial payment of ₱1,000,000 on or before March 26, 1997, another partial payment of ₱1,250,000 on or before May 5, 1997, and the remaining balance within 90 days. The request was approved, but petitioner failed to pay his obligation on May 5, 1997.[9]

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[6] TSN, December 10, 2001, pp. 2-19.

[7] Exhibit "F", records, Vol. III, p. 572.

[8] TSN, December 10, 2001, pp. 22-28.

[9] TSN, April 23, 2003, pp. 4-5, 18.

Reyes further testified that on August 29, 1997, petitioner requested that the penalty of his obligation be reduced from 36% to 9% per annum and that he be allowed to pay the remaining balance of ₱2,500,000 on September 30, 1997.[10] Said request was approved but no payment was made. Then, on October 30, 1997, petitioner requested that the bank convert his unpaid balance to an 18-month time loan,[11] making assurance that if his company's financial situation improves, he will settle his obligation within 6 months. No payment, however, was made. Finally, on July 17, 1998, petitioner once more requested for the reduction of the interest rate from 36% to 25% per annum and a full waiver of penalties upon full payment of his obligation on July 27, 1998. The bank approved petitioner's final request on the condition that if no payment is made on July 27, 1998, it will initiate foreclosure proceedings over the mortgaged properties.[12] Again, petitioner failed to fulfill his promise.[13]

On January 4, 2006, the RTC of Parañaque City promulgated its decision, dismissing petitioner's complaint as follows:

> WHEREFORE, for lack of merit, the complaint of plaintiff is dismissed. The claims for attorney's fees are denied for lack of evidence.
>
> IT IS SO ORDERED.[14]

The RTC ruled that the Deed of Real Estate Mortgage is valid and supported by substantial consideration. It found that the bank required the execution of the Deed of Real Estate Mortgage involving the subject properties to secure the unpaid loan obligation of T.C. Builders Suppliers, Inc., a company owned by petitioner. The trial court also found that the obligation was incurred when T.C. Builders purchased from Cotabato

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[10] Exhibit 12, records, Vol. III, p. 617.

[11] Exhibit 13, *id.* at 618.

[12] Exhibit 14, *id.* at 619.

[13] TSN, April 23, 2003, pp. 18-22.

[14] *Supra* note 2, at 109.

Timberland Company plywood-making machinery valued at ₱4,500,000. It was Westmont Bank that paid for the purchase price to Cotabato Timberland Company, and the bank was able to prove that the machinery was delivered to T.C. Builders as evidenced by a receipt signed by petitioner himself.[15]

The trial court also noted that despite petitioner's request for several extensions of time to pay the loan obligation, and approval of the same by the bank, he still reneged on his promise to pay. Thus, it held that the foreclosure sale of the properties mortgaged by petitioner was proper. Moreover, the RTC held that it was not convinced that petitioner indeed signed a blank Deed of Real Estate Mortgage. The RTC found it difficult to believe that petitioner, who appeared to be an experienced businessman, would allow such a questionable practice, unless he fully agreed with it. Assuming that he did sign a blank deed of real estate mortgage, it was made with his full consent and likely for purposes of his convenience. Similarly, the RTC found that the notarization of the document on the date when he was allegedly in Malaysia was also made with his consent and for his convenience.[16]

Unsatisfied, petitioner appealed the RTC Decision to the CA, raising the following issues:

1. Whether the [RTC] committed error of fact in finding that:

(a) [Petitioner's] claim of having signed a **blank** deed of real estate mortgage document is "not indubitable" and, even if true, the same was made "with his full consent and approval and could likely be for purposes of his convenience and the bank."

(b) The subject Deed of Real Estate Mortgage secured the unpaid loan obligation of T.C. Builder's Suppliers, Inc. to Westmont.

2. Whether the [RTC] committed error of law when:

(a) It manifestly disregarded the **undisputed** evidence presented by [petitioner] showing that the subject Deed was **contrived** and **spurious**.

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[15] *Id.* at 107-108.

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

(b) It admitted and gave credence to Westmont's documentary evidence even if the due execution and authenticity was **not** properly established in accordance with Rule 132, Section 20 of the Rules of Evidence.

(c) It ruled that the notarization of the subject was made with [petitioner's] consent and for his and the bank's convenience.

(d) It did not hold that the subject Deed was, on its face, null and void for lack of Westmont's consent.

(e) It did not rule that the foreclosure sale of the mortgaged properties is valid.

(f) It ruled that [petitioner's] claim for damages have no factual and legal basis.[17] (Emphasis and underscoring in the original.)

On January 24, 2008, the CA rendered the assailed decision, the *fallo* of which reads:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The assailed Decision of the court *a quo* STANDS.

SO ORDERED.[18]

The CA held that except for petitioner's self-serving testimony, there is nothing on record to sustain his claim that he signed a blank Deed of Real Estate Mortgage. In fact, the CA found that the deed in question is complete in form and substance when the parties signed it. The CA did not believe that petitioner, who is apparently of age and in excellent mental faculties, would deposit the titles of his properties with Westmont Bank without being sure of what kind of transaction he was entering into. The appellate court was likewise not convinced by petitioner's claim that the Deed of Real Estate Mortgage was intended to secure his personal loan of ₱6,000,000 as petitioner himself already admitted in his Petition for Cancellation of Mortgage before the trial court that he signed the deed to secure a loan to be granted to T.C. Builders Suppliers, Inc. Finally, the CA

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[17] CA *rollo*, pp. 50-51.

[18] *Supra* note 1, at 52.

ruled that the fact that the deed was signed on the day he flew to Malaysia does not render the deed spurious as it was possible that he signed the petition before he flew to Malaysia in the afternoon.[19]

Undaunted, petitioner filed a motion for reconsideration of the above CA decision, but his motion was denied in a Resolution dated April 22, 2008. Hence, this appeal raising the following issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT HELD THAT THE COURT *A QUO* WAS CORRECT IN ADMITTING WESTMONT'S DOCUMENTARY EXHIBITS IN EVIDENCE EVEN IF THE AUTHENTICITY AND DUE EXECUTION OF THE SAME HAVE NOT BEEN ESTABLISHED IN ACCORDANCE WITH THE RULES OF EVIDENCE.

II.

WHETHER THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT CONCLUDED, BASED MERELY ON SPECULATION AND CONJECTURE, THAT PETITIONER COULD HAVE POSSIBLY SIGNED THE DEED OF REAL ESTATE MORTGAGE BEFORE HE LEFT FOR MALAYSIA ON 10 JULY 1998.

III.

WHETHER THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT REFUSED TO HOLD THAT PETITIONER'S TESTIMONY IN OPEN COURT HAD SUPERSEDED THE ALLEGATIONS IN HIS PETITION BEFORE THE COURT *A QUO*, CONSISTENT WITH THIS HONORABLE COURT'S RULING IN *GARDNER V. COURT OF APPEALS*.

IV.

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT FAILED TO RECOGNIZE THAT PETITIONER HAS OVERCOME HIS BURDEN OF PROOF AND HAS ESTABLISHED HIS CASE BY A PREPONDERANCE OF EVIDENCE WHICH HAVE NOT BEEN VALIDLY DISPUTED BY WESTMONT;

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[19] *Id.* at 48-51.

HENCE, PETITIONER IS ENTITLED TO THE RELIEFS HE PRAYED FOR IN THE COURT *A QUO*.[20]

Essentially, the core issue in this petition is whether the CA erred in affirming the findings of the RTC that the Real Estate Mortgage executed by petitioner and Westmont Bank is valid.

Petitioner argues that the CA erred in holding that the trial court was correct in admitting Westmont Bank's documentary evidence. He asserts that Westmont Bank failed to prove the due execution and authenticity of the documentary evidence it presented by anyone who saw the document executed or written, or by evidence of the genuineness of the signature of the maker.

The petition has no merit.

The RTC, after considering the evidence and the testimonies of the witnesses, found that the Deed of Real Estate Mortgage was executed to secure the unpaid loan obligation of T.C. Builders Suppliers Inc., a company owned by petitioner. The CA found no error on the part of the trial court's appreciation of evidence before it, even noting that the documentary exhibits were the subject of cross-examinations and were subsequently admitted by the trial court without any objection from petitioner. Moreover, the CA observed that petitioner failed to rebut the authenticity and due execution of the documentary exhibits of Westmont Bank. All petitioner could offer by way of evidence was his unsupported claim that he signed a blank Deed of Real Estate Mortgage. Such claim is insufficient to overcome the Deed of Real Estate Mortgage which is a notarized document.

The court has held that one who denies the due execution of a deed where one's signature appears has the burden of proving that contrary to the recital in the *jurat*, one never appeared before the notary public and acknowledged the deed to be a voluntary act.[21] We have also held that a notarized instrument

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[20] *Id.* at 21-22.

[21] *Santos v. Lumbao*, G.R. No. 169129, March 28, 2007, 519 SCRA 408, 426-427.

is admissible in evidence without further proof of its due execution, is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity.[22]

In this case, the Deed of Real Estate Mortgage involving TCT Nos. 87878 and 87876 was notarized and acknowledged before notary public Fina Dela Cuesta-Tantuico.[23] Being a public document, it enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be clear and convincing evidence. Absent such evidence, as in this case, the presumption must be upheld.

Petitioner likewise asserts that it was physically impossible for him to execute and acknowledge the Deed of Real Estate Mortgage before notary public Fina Dela Cuesta-Tantuico because on the supposed date of execution and notarization, he was in Malaysia with his wife. However, as correctly pointed out by the CA, it can be gathered from the testimony of petitioner that he left the Philippines in the afternoon of July 10, 1998 and arrived in Malaysia an hour later. The CA noted that petitioner was in the Philippines from morning until early afternoon on said date, which means that he still had time to attend to his business transactions before his flight to Malaysia. Thus, we find no error on the part of the CA in concluding that petitioner could have signed the Deed of Real Estate Mortgage before he left for Malaysia on said date.

We note that these issues raised by petitioner are factual in nature and calls for a review of the evidence already considered in the proceedings below. The evaluation and calibration of the evidence necessarily involves consideration of factual issues—an exercise that is not appropriate for a petition for review on *certiorari* under Rule 45.

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[22] *China Banking Corporation v. Lagon*, G.R. No. 160843, July 11, 2006, 494 SCRA 560, 567.

[23] Records, Volume I, pp. 12-14.

As a general rule, only errors of law are reviewable by the Supreme Court on petitions for review on *certiorari.*[24] The rule finds more stringent application where the CA upholds the findings of fact of the trial court. In such instance, as in this case, this Court is generally bound to adopt the facts as determined by the lower courts.[25] When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court.[26]

Next, petitioner submits that his statement in the petition for cancellation of mortgage admitting that he signed the Deed of Real Estate Mortgage to secure a loan to be granted to T.C. Builders should be deemed to have been superseded by his testimony in open court that the subject Deed was supposedly intended to secure his personal loan with Westmont Bank. In support of his argument, he cites our ruling in *Gardner v. Court of Appeals*,[27] wherein the court allowed a party's testimony to override admissions made in his Answer.

Petitioner pointed out that in *Gardner*, we held that as a general rule, facts alleged in a party's pleading are deemed admissions of that party and are binding upon it, but this is not an absolute and inflexible rule. An answer is a mere statement of fact which the party filing expects to prove, but it is not evidence.[28] Thus, petitioner asserts that applying the foregoing by analogy, his statements in the petition for cancellation of mortgage had been repudiated by his subsequent testimony in open court.

The argument is untenable.

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[24] *Sering v. Court of Appeals*, 422 Phil. 467, 471 (2001).

[25] *Ong v. Ong*, G.R. No. 153206, October 23, 2006, 505 SCRA 76, 85.

[26] *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265; *Ramirez v. National Labor Relations Commission*, G.R. No. 155150, August 29, 2006, 500 SCRA 104, 106.

[27] G.R. No. 59952, August 31, 1984, 131 SCRA 585.

[28] *Id.* at 600.

In the *Gardner* case, the witness had repudiated in open court the defenses he had raised in his Answer and that the court found his testimony to be deserving of weight and credence. In said case, both the trial court and the appellate court believed in the witness' credibility. Here, the reverse holds true as both the trial court and CA found petitioner's testimony that he applied for a personal loan to be conflicting and incredible. Therefore, we find that petitioner's reliance on the ruling in *Gardner* is misplaced.

Finally, in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[29]

In the present case, petitioner failed to overcome the burden of proving his claim by preponderance of evidence that the questioned Deed is null and void. As we mentioned earlier, the CA did not find any error on the part of the trial court's appreciation of evidence, which found the Deed of Real Estate Mortgage to be valid and supported by substantial consideration. The trial court also found that since petitioner failed to pay his obligation despite request for several extensions of time to pay his loan, the foreclosure sale of the properties was therefore valid.

WHEREFORE, the petition for review on *certiorari* is **DENIED** for utter lack of merit. The Decision dated January 24, 2008, as well as the Resolution dated April 22, 2008 of the Court of Appeals in CA-G.R. CV No. 86882 are **AFFIRMED**.

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[29] *Eulogio v. Apeles,* G.R. No. 167884, January 20, 2009, 576 SCRA 561, 571-572.

Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 186123. February 27, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARITES VALERIO *Y* TRAJE,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; KIDNAPPING; ELEMENTS; ESTABLISHED. — The prosecution has established the elements of kidnapping under Article 267, paragraph 4 of the Revised Penal Code, to wit: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any other manner deprives the latter of his or her liberty; (3) the act of detention or kidnapping is illegal; and (4) the person kidnapped or detained is a minor, female or a public officer. The prosecution has adequately and satisfactorily proved that the appellant is a private individual; that the appellant took Regelyn from Pier 14 to Pier 16, without the knowledge or consent of Regelyn's parents; and that the appellant admitted Regelyn's minority and even referred to her as a "child."

2. ID.; ID.; PROPER PENALTY.— The prescribed penalty for kidnapping a minor under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, is *reclusion*

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[*] Designated additional member per Special Order No. 1207 dated February 23, 2012.

perpetua to death. Since neither aggravating nor mitigating circumstances attended the commission of the felony, the lower courts properly imposed the penalty of *reclusion perpetua*.

3. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— While we affirm the CA's factual findings and the imprisonment imposed, we find it necessary to award the victim ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, in line with prevailing jurisprudence. We also award the victim ₱30,000.00 as exemplary damages to set an example for the public good.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BRION, *J.*:

We resolve the appeal, filed by accused Marites Valerio *y* Traje (*appellant*), from the May 22, 2008 decision of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 01750.[1]

The RTC Ruling

In its May 11, 2001 decision,[2] the Regional Trial Court (*RTC*) of Manila, Branch 18, convicted the appellant of kidnapping,[3] committed against 3-year-old Regelyn Incabo *y* Canete. The trial court found that the appellant's act of taking Regelyn while the latter was playing near her house, without the knowledge or consent of her parents, constituted the crime of kidnapping a

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[1] Penned by Associate Justice Ricardo R. Rosario, and concurred in by Associate Justices Arcangelita Romilla-Lontok and Monina Arevalo Zenarosa; *rollo*, pp. 3-11.

[2] Docketed as Criminal Case No. 98-165477; *CA rollo*, pp. 12-14.

[3] See REVISED PENAL CODE, Article 267, as amended by Section 8 of Republic Act No. 7659, otherwise known as "The Death Penalty Law."

minor. It rejected the appellant's denial and gave credence to the straightforward testimony of Special Police Officer 1 (*SPO1*) Joselito dela Cruz who positively identified the appellant as the person holding Regelyn when he spotted her at the squatters' area near the Navotas fishport. It sentenced the appellant to suffer the penalty of *reclusion perpetua*.

The CA Ruling

On intermediate appellate review,[4] the CA affirmed the judgment of the RTC, giving full respect to the RTC's appreciation of the testimony of the witnesses.

In rejecting the appellant's insistence that she merely talked to Regelyn at Pier 14 to protect and prevent her from crossing the street, without any intention to kidnap her, the CA noted the appellant's actuations during the incident, particularly, that: (1) the appellant and Regelyn were already at the squatters' area of Pier 16 when SPO1 Dela Cruz spotted them several hours later; (2) the appellant was seen by SPO1 Dela Cruz not only talking to the victim, but was actually holding her; (3) the appellant did not take Regelyn to the *barangay* outpost in Pier 14, which was merely 11 steps away, to report that the child was probably missing, but took her to as far as Pier 16; and (4) the appellant misrepresented to SPO1 Dela Cruz that she took Regelyn to take care of her, despite the protestations of Regelyn's mother that she never entrusted Regelyn to the appellant's care.[5]

We now rule on the final review of the case.

Our Ruling

We affirm the appellant's conviction.

We find no reason to reverse the factual findings of the RTC, as affirmed by the CA. The prosecution has established the

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[4] The RTC forwarded the records of the case to the Court for automatic review. However, pursuant to *People v. Mateo* (G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640), we referred the case to the CA for intermediate appellate review; CA *rollo*, p. 76.

[5] *Supra* note 1.

elements of kidnapping under Article 267, paragraph 4 of the Revised Penal Code, to wit: (1) the offender is a private individual; (2) he kidnaps or detains another, or in any other manner deprives the latter of his or her liberty; (3) the act of detention or kidnapping is illegal; and (4) the person kidnapped or detained is a minor, female or a public officer.

The prosecution has adequately and satisfactorily proved that the appellant is a private individual; that the appellant took Regelyn from Pier 14 to Pier 16, without the knowledge or consent of Regelyn's parents; and that the appellant admitted Regelyn's minority and even referred to her as a "child."[6]

The prescribed penalty for kidnapping a minor under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, is *reclusion perpetua* to death. Since neither aggravating nor mitigating circumstances attended the commission of the felony, the lower courts properly imposed the penalty of *reclusion perpetua*.

While we affirm the CA's factual findings and the imprisonment imposed, we find it necessary to award the victim ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, in line with prevailing jurisprudence.[7] We also award the victim ₱30,000.00 as exemplary damages to set an example for the public good.[8]

WHEREFORE, the May 22, 2008 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01750 is hereby **AFFIRMED** with **MODIFICATION**. Appellant Marites Valerio *y* Traje is found guilty beyond reasonable doubt of kidnapping a minor

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[6] TSN, June 6, 2000, p. 2.

[7] *People of the Philippines v. Jerry Jacalne y Gutierrez*, G.R. No. 168552, October 3, 2011; and *People of the Philippines v. Alberto Anticamara y Cabillo and Fernando Calaguas Fernandez a.k.a. Lando Calaguas*, G.R. No. 178771, June 8, 2011.

[8] *People of the Philippines v. PO1 Froilan L. Trestiza*, G.R. No. 193833, November 16, 2011; and *People v. Bautista*, G.R. No. 188601, June 29, 2010, 622 SCRA 524, 546.

and sentenced to suffer the penalty of *reclusion perpetua.* The appellant is ordered to pay the victim, Regelyn Incabo *y* Canete, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 186132. February 27, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NESTOR TUGUINAY,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 8042; ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS.— The three elements of the crime of illegal recruitment in large scale, to wit: a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of Republic Act No. 8042); and c) the offender committed the same against three or more persons, individually or as a group, are present in this case.

2. ID.; ID.; ID.; IMPOSABLE PENALTY.— Section 7(b) of Republic Act No. 8042 prescribes a penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00 if the illegal recruitment constitutes economic sabotage, *i.e.*, illegal recruitment in large scale and illegal

recruitment committed by a syndicate. The RTC, as affirmed by the CA, imposed upon the appellant the penalty of life imprisonment and a fine of only ₱100,00.00. Since the fine of ₱100,000.00 is below the minimum set by law, we increase the same to ₱500,000.00.

3. ID.; REVISED PENAL CODE; ESTAFA; ELEMENTS.— The two elements of estafa – (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person – are also present in this case. The prosecution evidence duly proved that due to the appellant's false representations of overseas jobs, the complainants paid placement fees to the appellant who failed to secure the promised overseas jobs.

4. ID.; ID.; ID.; INDETERMINATE SENTENCE LAW, APPLIED; IMPOSABLE PENALTY.— Article 315 of the Revised Penal Code prescribes the penalty for estafa, when the amount of fraud is over ₱22,000.00, of *prision correccional* maximum to *prision mayor* minimum, adding one year to the maximum period for each additional ₱10,000.00, provided that the total penalty shall not exceed 20 years. Applying the Indeterminate Sentence Law (*ISL*), we take the minimum term from the penalty next lower than the minimum prescribed by law, or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). Thus, the lower courts correctly imposed the minimum term in the 4 counts of estafa at 4 years and 2 months of *prision correccional*, since this is within the range of *prision correccional* minimum and medium. For the maximum term under the ISL, we take the maximum period of the prescribed penalty, adding one year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty shall not exceed 20 years.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BRION, *J.*:

We resolve the appeal, filed by accused Nestor Tuguinay (*appellant*), from the July 21, 2008 decision of the Court of Appeals (*CA*) in CA-G.R. H.C. CR- No. 02206.[1]

The RTC Ruling

In its October 29, 2003 decision,[2] the Regional Trial Court (*RTC*) of Baguio City, Branch 60, convicted the appellant of illegal recruitment in large scale[3] and four counts of estafa.[4] It gave full credence to the straightforward testimonies of complainants Ferdinand Aguilar *y* Pontino, Sakio Balicdang, Lim U. Tany and Jordan B. Bangcawayan, pointing to the appellant and his co-accused, Nida Bermudez,[5] as the persons who recruited and promised them overseas employment in exchange for sums of money. It found that the appellant was not licensed to recruit workers for overseas employment, per the June 6, 2001 Certification of the Philippine Overseas Employment Administration. It noted that the appellant defrauded Aguilar, Balicdang, Tany and Bangcawayan in the amounts of ₱63,500.00, ₱75,000.00, ₱70,000.00 and ₱70,000.00, respectively. It rejected the appellant's bare and uncorroborated denial.

For the crime of illegal recruitment in Criminal Case No. 19287-R, the RTC sentenced the appellant to suffer the penalty of life imprisonment and ordered him to pay a ₱100,000.00

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[1] Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), and concurred in by Associate Justices Vicente Q. Roxas and Apolinario D. Bruselas, Jr.; *rollo*, pp. 4-19.

[2] Docketed as Criminal Case Nos. 19287-R to 19291-R; *CA rollo*, pp. 31-43.

[3] See LABOR CODE OF THE PHILIPPINES, Article 13(b), in relation to Articles 34, 38(b) and 39, as amended by Presidential Decree Nos. 1693, 1920 and 2018 and Republic Act No. 8042, otherwise known as "The Migrant Workers and Overseas Filipinos Act of 1995."

[4] See REVISED PENAL CODE, Article 315, paragraph 2(a).

[5] Remains at large.

fine. For each count of estafa committed against Aguilar, Tany and Bangcawayan in Criminal Case Nos. 19288-R, 19290-R and 19291-R, it sentenced the appellant to suffer an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 12 years of *prision mayor*, as maximum. For the crime of estafa committed against Balicdang in Criminal Case No. 19289-R, the RTC sentenced the appellant to suffer an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 13 years of *reclusion temporal*, as maximum. It did not impose any civil liability on the appellant, noting that he had already settled his civil obligations to the complainants.

The CA Ruling

On intermediate appellate review,[6] the CA affirmed the RTC's decision, giving full respect to the RTC's assessment of the testimonies and credibility of the complainants.

We now rule on the final review of the case.

Our Ruling

We deny the appeal, but modify the penalties imposed.

The three elements of the crime of illegal recruitment in large scale, to wit: a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of Republic Act No. 8042); and c) the offender committed the same against three or more persons, individually or as a group, are present in this case.

The prosecution adduced proof beyond reasonable doubt that the appellant enlisted the four complainants for overseas

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[6] The RTC forwarded the records of the case to the Court for automatic review. However, pursuant to *People v. Mateo* (G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640), we referred the case to the CA for intermediate appellate review; CA *rollo*, pp. 62-63.

employment without any license to do so. The four complainants adequately testified on the demand for placement fees made by the appellant, and the payments they made. No motive affecting their credibility was ever imputed against them. We, therefore, rule that the lower courts correctly found the appellant guilty of illegal recruitment in large scale.

Section 7(b) of Republic Act No. 8042 prescribes a penalty of life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00 if the illegal recruitment constitutes economic sabotage, *i.e.*, illegal recruitment in large scale and illegal recruitment committed by a syndicate. The RTC, as affirmed by the CA, imposed upon the appellant the penalty of life imprisonment and a fine of only ₱100,000.00. Since the fine of ₱100,000.00 is below the minimum set by law, we increase the same to ₱500,000.00.

We likewise affirm the appellant's conviction for the crime of estafa. The two elements of estafa – (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person – are also present in this case. The prosecution evidence duly proved that due to the appellant's false representations of overseas jobs, the complainants paid placement fees to the appellant who failed to secure the promised overseas jobs.

Article 315 of the Revised Penal Code prescribes the penalty for estafa, when the amount of fraud is over ₱22,000.00, of *prision correccional* maximum to *prision mayor* minimum, adding one year to the maximum period for each additional ₱10,000.00, provided that the total penalty shall not exceed 20 years. Applying the Indeterminate Sentence Law (*ISL*), we take the minimum term from the penalty next lower than the minimum prescribed by law, or anywhere within *prision correccional* minimum and medium (*i.e.*, from 6 months and 1 day to 4 years and 2 months). Thus, the lower courts correctly imposed the minimum term in the 4 counts of estafa at 4 years and 2 months of *prision correccional*, since this is within the range of *prision correccional* minimum and medium.

For the maximum term under the ISL, we take the maximum period of the prescribed penalty, adding one year of imprisonment for every ₱10,000.00 in excess of ₱22,000.00, provided that the total penalty shall not exceed 20 years. To compute the maximum period of the prescribed penalty, the time included in *prision correccional* maximum to *prision mayor* minimum shall be divided into three equal portions, with each portion forming a period. Following this computation, the maximum period for *prision correccional* maximum to *prision mayor* minimum is from 6 years, 8 months, and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months, and 21 days to 8 years, at the discretion of the court. In computing the incremental penalty, the amount defrauded shall be subtracted by ₱22,000.00, the difference shall be divided by ₱10,000.00, and any fraction of a year is discarded.[7]

Upon review, we modify the maximum term of the indeterminate sentence imposed on the appellant in Criminal Case Nos. 19288-R to 19291-R.

In Criminal Case No. 19288-R, since the amount defrauded of ₱63,500.00 exceeds ₱22,000.00 by ₱41,500.00, 4 years shall be added to the maximum period of the prescribed penalty (anywhere between 6 years, 8 months, and 21 days to 8 years). In the absence of any aggravating circumstance, we add the 4 years of incremental penalty to the lowest of the maximum period, which is 6 years, 8 months and 21 days. The maximum term, therefore, of the appellant's indeterminate sentence in Criminal Case No. 19288-R is only 10 years, 8 months and 21 days of *prision mayor*.

In Criminal Case No. 19289-R, since the amount defrauded of ₱75,000.00 exceeds ₱22,000.00 by ₱53,000.00, 5 years shall be added to the maximum period of the prescribed penalty (anywhere between 6 years, 8 months and 21 days to 8 years).

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[7] *People of the Philippines v. Rosario "Rose" Ochoa*, G.R. No. 173792, August 31, 2011; *People of the Philippines v. Dolores Ocden*, G.R. No. 173198, June 1, 2011; and *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 299.

In the absence of any aggravating circumstance, we add the 5 years of incremental penalty to the lowest of the maximum period, which is 6 years, 8 months and 21 days. The maximum term, therefore, of the appellant's indeterminate sentence in Criminal Case No. 19289-R is only 11 years, 8 months and 21 days of *prision mayor*.

In Criminal Case Nos. 19290-R and 19291-R, since each of the amounts defrauded of ₱70,000.00 exceeds ₱22,000.00 by ₱48,000.00, 4 years shall be added to the maximum period of the prescribed penalty (anywhere between 6 years, 8 months and 21 days to 8 years) in each case. In the absence of any aggravating circumstance in these cases, we add the 4 years of incremental penalty to the lowest of the maximum period, which is 6 years, 8 months and 21 days. The maximum term, therefore, of the appellant's indeterminate sentence in Criminal Case Nos. 19290-R and 19291-R is only 10 years, 8 months and 21 days of *prision mayor*.

WHEREFORE, the July 21, 2008 decision of the Court of Appeals in CA-G.R. H.C. CR No. 02206 is hereby **AFFIRMED** with **MODIFICATION**. Appellant Nestor Tuguinay is found guilty beyond reasonable doubt of illegal recruitment in large scale in Criminal Case No. 19287-R and is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. He is likewise found guilty beyond reasonable doubt of four counts of estafa and sentenced to an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 10 years, 8 months and 21 days of *prision mayor*, as maximum, in Criminal Case Nos. 19288-R, 19290-R and 19291-R; and an indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 11 years, 8 months and 21 days of *prision mayor*, as maximum, in Criminal Case No. 19289-R.

SO ORDERED.

Carpio (Chairperson), Abad,[*] *Perez,* and *Sereno, JJ.*, concur.

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[*] Additional member in lieu of Associate Justice Bienvenido L. Reyes, per Raffle dated February 8, 2012.

THIRD DIVISION

[G.R. No. 193065. February 27, 2012]

DEUTSCHE BANK AG, *petitioner, vs.* **COURT OF APPEALS and STEEL CORPORATION OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOOT AND ACADEMIC CASE; EXPLAINED.— A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, the bar and the public. Moreover, as an exception to the rule on mootness, the courts will decide a question otherwise moot if it is capable of repetition, yet evading review.

2. ID.; ID.; CONSOLIDATION OF ACTIONS; WHEN PROPER.— Consolidation of actions involving a common question of law or fact is expressly authorized under Section 1, Rule 31 of the 1997 Rules of Civil Procedure. x x x Consolidation of cases is also allowed under Section 3, Rule III of the 2009 IRCA. x x x As can be gleaned from the aforequoted provision, for consolidation to be proper, the cases sought to be consolidated must be related. Similarly, jurisprudence has laid down the requisites for consolidation. In the recent case of *Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.*, the Court held that "it is a time-honored principle that when two or more cases involve the same parties and affect closely related subject matters, they must be consolidated and jointly tried, in order to serve the best interests of the parties and to settle expeditiously the issues involved. In other words, consolidation is proper wherever the subject matter involved and relief demanded in the different suits make it expedient

for the court to determine all of the issues involved and adjudicate the rights of the parties by hearing the suits together." x x x Hence, consolidation of cases is proper when there is a real need to forestall the possibility of conflicting decisions being rendered in the cases.

3. ID.; ID.; ID.; CONSOLIDATION AIMS TO ATTAIN JUSTICE WITH THE LEAST EXPENSE AND VEXATION TO THE PARTIES-LITIGANTS.— It is well recognized that the purpose of the rule on consolidation is to avoid multiplicity of suits; to guard against oppression and abuse; to prevent delays; to clear congested dockets; and to simplify the work of the trial court. In short, consolidation aims to attain justice with the least expense and vexation to the parties-litigants. It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy, and inexpensive determination of their cases before the courts. Further, it results in the avoidance of the possibility of conflicting decisions being rendered by the courts in two or more cases, which would otherwise require a single judgment.

4. ID.; ID.; ID.; THE COURT MAY DISALLOW THE CONSOLIDATION OF CASES; WHEN SUSTAINED.— Relevant is the case of *Republic of the Phils. v. Hon. Mangrobang*, where the Court disallowed the consolidation of an ejectment case and a case for eminent domain because the consolidation thereof would complicate procedural requirements and delay the resolution of the cases which raised dissimilar issues. The Court held that fairness and due process might be hampered rather than helped if the cases were consolidated. Likewise, in *Philippine National Bank v. Tyan Ming Development, Inc.* the non-consolidation of PNB's petition for a writ of possession and GOTESCO's complaint for annulment of foreclosure proceeding was upheld for defeating the very purpose of consolidation, x x x In the recent case of *Espinoza v. United Overseas Bank Phils.*, the Court, in the same manner ruled against the consolidation of the proceedings for the issuance of a writ of possession with that for the declaration of nullity of a foreclosure sale on the ground that it would run counter to the purpose of consolidation: x x x Indeed, the consolidation of actions is addressed to the sound discretion of the court and its action in consolidating will not

be disturbed in the absence of manifest abuse of discretion. Grave abuse of discretion defies exact definition, but it generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Corporate Counsels, Phils. Law Offices for private respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure assailing the March 12, 2010[1] and July 19, 2010[2] Resolutions of the Court of Appeals (*CA*) in CA-G.R. SP No. 111556 entitled "*Deutsche Bank AG v. Hon. Judge Albert A. Kalalo and Steel Corporation of the Philippines*" *(Deutsche Bank AG Petition)* for having been issued without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, insofar as they ordered the consolidation of the Deutsche Bank AG Petition with another case earlier filed and docketed as CA-G.R. SP No. 107535 entitled "*Vitarich Corporation v. Judge Danilo Manalastas*" *(Vitarich Petition)* on the ground that the two cases involve a common question of law.

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[1] Annex "A" of Petition, *rollo*, pp. 69-70. Penned by Associate Justice Magdangal M. De Leon with Associate Justice Romeo F. Barza and Associate Justice Franchito N. Diamante, concurring.

[2] Annex "B" of Petition, *id.* at 72-74.

THE FACTS

Private respondent Steel Corporation of the Philippines *(SteelCorp)* is a domestic corporation organized and existing under the laws of the Philippines with principal place of business in Munting Tubig, Balayan, Batangas. It is engaged in the business of manufacturing and distribution of cold-rolled, galvanized and pre-painted steel sheets and coils.

On December 7, 1995, SteelCorp, as borrower, entered into a loan agreement[3] with a consortium of lending banks and other financial institutions for the purpose of partially financing the construction of its integrated steel mill project. One of the participating lenders was Rizal Commercial Banking Corporation *(RCBC).*

SteelCorp failed to pay its loan obligations as they fell due. Thus, on September 11, 2006, Equitable PCI Bank, Inc. (now Banco de Oro) filed a creditor-initiated petition to place SteelCorp under corporate rehabilitation before the Regional Trial Court of Batangas, Branch 2, which was subsequently raffled to Branch 4 (*RTC-Batangas*). This case was docketed as Spec. Proc. No. 06-7993.[4]

In its Decision[5] dated December 3, 2007, the RTC-Batangas approved the proposed Rehabilitation Plan and ordered the parties to comply strictly with the provisions of the approved Rehabilitation Plan.

In February 2008 and during the pendency of the proceedings before the RTC-Batangas, RCBC and petitioner Deutsche Bank AG entered into a deed of assignment,[6] wherein the former assigned to the latter all of its rights, obligations, title to, and interest in, the loans which it had extended to SteelCorp in the aggregate outstanding principal amount of ₱94,412,862.58.

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[3] Annex "C" of Petition, *id.* at 76-112.

[4] Annex "H" of Petition, *id.* at 234-267.

[5] Annex "I" of Petition, *id.* at 269-297.

[6] Annex "J" of Petition, *id.* at 300.

SteelCorp was duly informed of the said assignment through the Notice of Transfer[7] sent to it by RCBC.

Through its Entry of Appearance with Motion for Substitution of Parties[8] dated May 2, 2008, Deutsche Bank AG informed the RTC-Batangas of the said transfer and assignment of the loan obligations.

The RTC-Batangas, upon the motion of SteelCorp, issued its Order dated October 28, 2009, directing the assignees, including Deutsche Bank AG, to disclose the actual price or consideration paid by them for the SteelCorp debts assigned and transferred to them.[9] From this order, Deutsche Bank AG filed its Petition for *Certiorari* (With Urgent Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction) with the CA docketed as CA-G.R. No. 111556.[10]

Records show that two other petitions for *certiorari* filed by other creditors of SteelCorp were pending before different divisions of the CA, both of which arising from the same October 28, 2009 Order of the RTC-Batangas. The cases were docketed as follows:

1. CA-G.R. SP No. 111560 entitled *"Investments 2234 Philippines Fund, Inc. v. Hon. Albert A. Kalalo, in His Capacity as the Presiding Judge of the Regional Trial Court of Batangas City, Branch 4 and Steel Corporation of the Philippines" (Investments 2234 Petition);* and

2. CA-G.R. SP No. 112175 entitled *"Equitable PCI Bank, Inc. (now BDO Unibank, Inc.) v. Hon. Albert A. Kalalo in His Capacity as Presiding Judge of the Regional Trial Court of Batangas City, Branch 4 and Steel Corporation of the Philippines" (EPCIB Petition).*

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[7] Annex "K" of Petition, *id.* at 304-305.

[8] Annex "L" of Petition, *id.* at 307-309.

[9] Annex "Q" of Petition, *id.* at 368-371.

[10] Annex "R" of Petition, *id.* at 373.

In the meantime, SteelCorp filed its Motion for Consolidation[11] dated February 18, 2010, praying for the consolidation of the Deutsche Bank AG Petition, together with the Investments 2234 Petition and EPCIB Petition, with the Vitarich Petition on the ground that the cases involved the same question of law – whether creditors could be compelled to disclose the actual assignment price for credits in litigation which were assigned in the context of a corporate rehabilitation proceeding pursuant to Articles 1634 and 1236 of the Civil Code.

On March 12, 2010, the CA in CA-G.R. SP No. 111556 issued the assailed Resolution ordering the consolidation of Deutsche Bank AG Petition with the Vitarich Petition, to wit:

> Finding merit in the motion, and pursuant to Section 3(a), Rule III of the Internal Rules of the Court of Appeals, the instant petition is ordered **CONSOLIDATED** with CA-G.R. SP No. 107535 (the case with the lower docket number), subject to the conformity of the *ponente* thereof and with right of replacement with a case of similar nature and status.
>
> **SO ORDERED**.[12]

It appears from the records that the Vitarich Petition emanated from Civil Case No. 592-M-2006 entitled "*In the Matter of the Petition for Corporate Rehabilitation of Vitarich Corporation*" which is currently pending before Branch 7, Regional Trial Court of Bulacan *(RTC-Bulacan)*.

The RTC-Bulacan in its Decision dated May 31, 2007, approved the Vitarich rehabilitation plan and upheld the rights of the assignees as subrogees to all the rights and obligations of the original creditors.

Vitarich sought a partial reversal of the said decision via a petition for review under Rule 43 of the 1997 Rules of Court (docketed as CA-G.R. SP No. 99374), contending that it should only be made to pay the discounted transfer prices of the assigned

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[11] Annex "X" of Petition, *id.* at 496-592.

[12] *Rollo*, pp. 69-70.

credits should it decide to exercise its right of redemption. Vitarich, however, withdrew the said petition and instead filed a motion to direct the assignees to disclose the amounts paid by them to their assignors.

In its Order dated January 15, 2009, the RTC-Bulacan denied Vitarich's motion, ruling that the rehabilitation case before it could not be considered as a litigation as contemplated in Article 1634 of the Civil Code.

Hence, Vitarich filed its petition[13] praying that the CA order the assignees to disclose the actual amount paid to their respective assignors so that it could pay the transfer prices of the assigned credits should it exercise its right of redemption. Several banks moved for the dismissal of this petition on the ground that the ruling on the issue raised therein had already become final.

Deutsche Bank AG filed a motion for reconsideration[14] of the March 12, 2010 CA resolution arguing that the Deutsche Bank AG petition and the Vitarich petition were not related cases that would merit consolidation. It stressed that a common question of law alone does not warrant consolidation inasmuch as the Internal Rules of the CA *(IRCA)* provides that for consolidation to be proper, the cases must be related. It also claimed that the consolidation of these two unrelated cases would not serve the purpose of consolidation, which was to obtain justice with the least expense and vexation to the litigants.

The said motion was, however, denied by the CA in its Resolution dated July 19, 2010. Citing *Zulueta v. Asia Brewery, Inc.*,[15] it held that consolidation of cases under Section 3(a), Rule III of the IRCA was proper as the cases involved common questions of law.

Thus, the CA agreed with the SteelCorp's conclusion that when two cases involved the same parties, or related questions

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[13] Annex "AA" of Petition, *id.* at 525-558.

[14] *Rollo*, p. 656.

[15] 406 Phil. 543 (2001).

of fact, or related questions of law, then they were considered as related cases for purposes of consolidation. The pertinent portion of the CA resolution reads:

> To deny the transfer of a case to a court or division where another case involving the same question of law is pending could lead to further protracted litigations. The rationale for consolidation is to have all cases intimately related acted upon by one Court/Division to avoid the possibility of conflicting decisions being rendered that will not serve the orderly administration of justice.
>
> The added expense and unjustified vexation intimated by petitioner are all in the mind. One division of this Court would be able to resolve the issue in both petitions with more dispatch and accord than two divisions.
>
> **WHEREFORE**, the motion for reconsideration is **DENIED**.
>
> **SO ORDERED**.[16]

Hence, Deutsche Bank AG interposes the present special civil action before this Court anchored on the following

GROUNDS

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN ISSUING THE ASSAILED RESOLUTIONS AND ORDERING THE CONSOLIDATION OF THE TWO (2) SUBJECT PETITIONS CONSIDERING THAT:

(I)

UNDER SECTION 3(A) RULE III OF THE INTERNAL RULES OF THE COURT OF APPEALS AND LONGSTANDING JURISPRUDENCE, FOR CONSOLIDATION TO BE PROPER, THE CASES MUST BE RELATED, *I.E.*, THEY ARISE FROM THE SAME ACT, EVENT OR TRANSACTION, INVOLVE THE SAME OR LIKE ISSUES, AND DEPEND LARGELY OR SUBSTANTIALLY ON THE SAME EVIDENCE. HERE, THE CASES SOUGHT TO BE CONSOLIDATED ARE TOTALLY UNRELATED;

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[16] *Rollo*, pp. 73-74.

(II)

THE CONSOLIDATION OF THE TWO CASES WILL BE COMPLETELY AGAINST THE PURPOSE OF CONSOLIDATION, WHICH IS TO OBTAIN JUSTICE WITH THE LEAST EXPENSE AND VEXATION TO THE LITIGANTS.[17]

It appears from the records that on November 18, 2011, SteelCorp filed a manifestation dated November 17, 2011, stating that the assailed resolution ordering consolidation dated March 12, 2010 had been issued in response to the Motion for Consolidation dated February 18, 2010 filed therein by SteelCorp. SteelCorp manifested that on November 14, 2011, in CA-G.R. SP No. 111556, it filed its Motion to Withdraw the said Motion for Consolidation in order to forestall further delay and for the CA to proceed in the resolution of the merits of the case, rendering this petition moot.

In view of the said withdrawal of the motion for consolidation, the present petition assailing the CA's order of consolidation has certainly been rendered moot and academic.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, the bar and the public. Moreover, as an exception to the rule on mootness, the courts will decide a question otherwise moot if it is capable of repetition, yet evading review.[18]

This case comes within the rule that courts will decide a question, otherwise moot and academic, if it is "capable of

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[17] *Id.* at 48-49.

[18] *Integrated Bar of the Philippines v. Atienza*, G.R. No. 175241, February 24, 2010, 613 SCRA 518, 523, citing *Funa v. Ermita*, G.R. No. 184740, February 11, 2010, 612 SCRA 308.

repetition, yet evading review." The issue of whether the CA pursuant to its internal rules can validly order consolidation of cases on the sole ground that the same involve a common question of law most likely will recur. Thus, there is a necessity to decide the case on the merits.

The Court will now resolve the merits of the sole issue raised in this petition, whether the CA gravely abused its discretion amounting to lack or excess of jurisdiction when it ordered the consolidation of the Deutsche Bank AG petition and the Vitarich petition.

Deutsche Bank AG argues that a common question of law alone would not warrant consolidation, and for cases to be consolidated, the same must be related cases. It cited as basis the ruling enunciated in the landmark case of *Teston v. Development Bank of the Philippines*,[19] that actions involving common question of law or fact may be tried together where they arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence. It contends that there was grave abuse of discretion on the part of the CA when it ordered the consolidation because Deutsche Bank AG Petition and the Vitarich Petition were not related, much less, intimately related cases. The two cases were entirely different with separate factual antecedents, having arisen from two separate petitions for rehabilitation of two distinct corporations. In addition, there were no interconnected transactions in, nor identical properties subject of, the two cases. It further argues that consolidation would only defeat, rather than serve, the purpose of consolidation.

SteelCorp counters that the CA may consolidate cases on the sole ground that the cases involve related questions of law. Thus, the fact that Deutsche Bank AG Petition and Vitarich Petition involve an identical question of law is sufficient to make them related cases which were proper for consolidation pursuant to Section 3(a), Rule III of the IRCA.

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[19] 511 Phil. 221 (2005).

The Court agrees with Deutsche Bank AG.

Consolidation of actions involving a common question of law or fact is expressly authorized under Section 1, Rule 31 of the 1997 Rules of Civil Procedure, to wit:

> SECTION 1. Consolidation. – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation of cases is also allowed under Section 3, Rule III of the 2009 IRCA, to wit:

> Consolidation of Cases. – When **related cases** are assigned to different Justices, they may be consolidated and assigned to one Justice.
>
> (a) Upon motion of a party with notice to the other party/ies, or at the instance of the Justice to whom any of the related cases is assigned, upon notice to the parties, consolidation shall ensue when the cases involve the same parties and/or related questions of fact and/or law.
>
> (b) Consolidated cases shall pertain to the Justice –
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> (1) To whom the case with the lowest docket number is assigned, if they are of the same kind;
>
> (2) To whom the criminal case with the lowest number is assigned, if two or more of the cases are criminal and the others are civil or special;
>
> (3) To whom the criminal case is assigned and the other are civil or special; and
>
> (4) To whom the civil case is assigned, or to whom the civil case with the lowest docket number is assigned, if the cases involved are civil and special.
>
> (c) Notice of the consolidation and replacement shall be given to the Raffle Staff and the Judicial Records Division. (Emphasis and underscoring supplied)

As can be gleaned from the aforequoted provision, for consolidation to be proper, the cases sought to be consolidated must be related.

Similarly, jurisprudence has laid down the requisites for consolidation. In the recent case of *Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.*,[20] the Court held that "it is a time-honored principle that when two or more cases involve the same parties and affect closely related subject matters, they must be consolidated and jointly tried, in order to serve the best interests of the parties and to settle expeditiously the issues involved. In other words, consolidation is proper wherever the subject matter involved and relief demanded in the different suits make it expedient for the court to determine all of the issues involved and adjudicate the rights of the parties by hearing the suits together."

In the present case, there is no sufficient justification to order the consolidation inasmuch as the Deutsche Bank AG Petition has no relation whatsoever to the Vitarich Petition. To recall, the Deutsche Bank AG Petition is an appeal on *certiorari* from the Order dated October 28, 2009 of the RTC Batangas in Sp. Proc. No. 06-7993. Vitarich case, on the other hand, is an appeal on *certiorari and mandamus* from the Order dated January 19, 2009 of the RTC Bulacan in Civil Case No. 592-M-2006.

The fact that Deutsche Bank AG is a party to both cases does not make the proceedings intimately related. There is no factual relation between the two proceedings. SteelCorp proceedings originated from SteelCorp's rehabilitation proceedings which have nothing to do with the Vitarich proceeding that originated from Vitarich's rehabilitation proceeding.

Neither are there interconnected transactions, nor identical subject matter in the Deutsche Bank AG and Vitarich petitions. The former involved issue resulting from the assignment of credits of RCBC to Deutsche Bank AG whereas in the latter,

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[20] G.R. No. 190462 & G.R. No. 190538, November 17, 2010, 635 SCRA 403.

the issue arose from the assignment of the receivables of various creditors of Vitarich to several corporations and special purpose vehicles *(SPVs)*.

Verily, the two petitions having no factual relationship with and no interconnected transactions on the same subject matter, they cannot be deemed "related cases." As such, the necessity to consolidate does not become imperative. The order of consolidation by the CA on the sole ground that the cases involved a common question of law was, therefore, not in order.

It bears noting that the CA cited the cases of *Zulueta v. Asia Brewery, Inc.*,[21] *Benguet Corporation, Inc. v. Court of Appeals*,[22] *and Active Wood Products Co., Inc. v. Court of Appeals*[23] as jurisprudential basis of its order to consolidate. Its reliance on the said cases was misplaced as the factual milieus therein were not in all fours with the case at bench. The ruling in these cases, in fact, bolstered Deutsche Bank AG's position that for consolidation to be warranted the cases sought to be consolidated must not only involve related issues but also the same parties and closely related subject matters.

The CA cannot rely on the case of *Zulueta v. Asia Brewery, Inc.*, to support its ruling that consolidation is proper when the cases involve the resolution of a common question of law or fact. In the said case, a joint trial of the two cases was justified because both arose out of, or an incident of, the same Dealership Agreement. Thus, the Court upheld the consolidation in this wise:

> Inasmuch as the binding force of the Dealership Agreement was put in question, it would be more practical and convenient to submit to the Iloilo court all the incidents and their consequences. The issues in both civil cases pertain to the respective obligations of the same parties under the Dealership Agreement. Thus, every transaction as

[21] 406 Phil. 543 (2001).

[22] 247-A Phil. 356 (1988).

[23] 260 Phil. 825 (1990).

well as liability arising from it must be resolved in the judicial forum where it is put in issue. The consolidation of the two cases then becomes imperative to a complete, comprehensive and consistent determination of all these related issues.

Two cases involving the same parties and affecting closely related subject matters must be ordered consolidated and jointly tried in court, where the earlier case was filed.[24] (underscoring supplied)

In the case of *Benguet Corporation, Inc. v. Court of Appeals*, where it was written that "the rationale for consolidation is to have all cases *intimately related* acted upon by one Court/ Division to avoid the possibility of conflicting decisions being rendered."[25] A scrutiny of the ruling in *Benguet* reveals that the case pending in the 9th Division was merely an offshoot of the decision rendered in the 10th Division. Faulting the CA 9th Division with grave abuse of discretion in denying Benguet's Motion to Transfer Case No. CA-G.R. SP No. 12964 to the 10th Division, the Court held, thus:

2. The matter elevated to the 9th Division, namely, the implementation of the Writ of Preliminary Mandatory Injunction with Break-open Order issued by the Trial Court on 29 September 1987 in favor of BENGUET in the Reconveyance Case (Civil Case No. 5815) was a consequence of the very Decision rendered by the 10th Division. It was, therefore, properly within its competence being intimately related to the very issues raised and resolved by said Division.

3. The rationale for consolidation is to have all cases intimately related acted upon by one Court Division to avoid the possibility of conflicting decisions in cases involving the same facts and common questions of law. The cases before the 10th Division and the 9th Division of the Court of Appeals are two (2) such intimately and substantially related cases. Consolidation being called for it cannot be justifiably argued, as private respondents do, that BENGUET is estopped from pleading for such consolidation. To deny the transfer could lead to

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[24] *Zulueta v. Asia Brewery, Inc.*, *supra* note 21 at 555-556.

[25] *Supra* note 22.

further protracted litigations to the detriment of the efficient and effective determination of actions and proceedings.[26] (underscoring supplied)

Hence, consolidation of cases is proper when there is a real need to forestall the possibility of conflicting decisions being rendered in the cases.[27] In the case under consideration, considering that Deutsche Bank AG and Vitarich cases are not related, the risk of conflicting decisions is a remote probability.

Lastly, in *Active Wood Products Co., Inc. v. Court of Appeals*, the Court sustained the consolidation of the civil case filed by Active Wood against State Investment House and the latter's petition for a writ of possession in the land registration case as they involved the same parties and the same subject matter – Active Wood's two parcels of land, thus:

> The consolidation of cases becomes mandatory because it involves the same parties and the same subject matter which is the same parcel of land. Such consolidation is desirable to avoid confusion and unnecessary costs and expenses with the multiplicity of suits.[28] xxx (underscoring supplied)

Further, the Court finds merit in Deutsche Bank AG's contention that the consolidation of the subject cases will defeat the purpose of consolidation.

It is well recognized that the purpose of the rule on consolidation is to avoid multiplicity of suits; to guard against oppression and abuse; to prevent delays; to clear congested dockets; and to simplify the work of the trial court. In short, consolidation aims to attain justice with the least expense and vexation to the parties-

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[26] *Benguet Corporation, Inc. v. Court of Appeals*, *supra* note 22 at 363.

[27] *Bank of Commerce v. Perlas-Bernabe*, G.R. No. 172393, October 20, 2010, 634 SCRA 107, 121.

[28] *Active Wood Products Co., Inc. v. Court of Appeals*, *supra* note 23 at 829-830.

litigants.[29] It contributes to the swift dispensation of justice, and is in accord with the aim of affording the parties a just, speedy, and inexpensive determination of their cases before the courts. Further, it results in the avoidance of the possibility of conflicting decisions being rendered by the courts in two or more cases, which would otherwise require a single judgment.[30]

Under the circumstances, the consolidation of the Deutsche Bank AG Petition with the Vitarich Petition does not appear to be a prudent move as it serves none of the purposes cited above. On the contrary and as correctly pointed out by Deutsche Bank AG, it will only complicate the resolution of the cases as the CA would have to consider the different factual antecedents of both the Deutsche Bank AG and Vitarich petitions.

Moreover, the question of law that the Vitarich proceedings allegedly shares with the SteelCorp Proceedings – whether Vitarich's creditors could be compelled to disclose the sums paid for the assigned Vitarich loans - has long been finally resolved and has already become the law of the case among the parties in the Vitarich rehabilitation proceedings. Thus, the consolidation would unduly prejudice the banks and would lead to complications, delay or restriction on the right of the banks to the immediate dismissal of the Vitarich proceedings.

Furthermore, the consolidation will only subject the parties to added expense and unjust vexation. The number of parties will substantially increase so as the cost of furnishing the parties with pleadings, thereby defeating the very rationale behind consolidation.

Relevant is the case of *Republic of the Phils. v. Hon. Mangrobang*,[31] where the Court disallowed the consolidation

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[29] *Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.*, *supra* note 20 at 416, citing *Canos v. Peralta*, 201 Phil. 422 (1982).

[30] *Id.*, citing *Yu, Sr. v. Basilio G. Magno Construction and Development Enterprises, Inc.*, G.R. Nos. 138701-02, October 17, 2006, 504 SCRA 618, 633.

[31] 422 Phil. 178 (2001).

of an ejectment case and a case for eminent domain because the consolidation thereof would complicate procedural requirements and delay the resolution of the cases which raised dissimilar issues. The Court held that fairness and due process might be hampered rather than helped if the cases were consolidated.

Likewise, in *Philippine National Bank v. Tyan Ming Development, Inc.*[32] the non-consolidation of PNB's petition for a writ of possession and GOTESCO's complaint for annulment of foreclosure proceeding was upheld for defeating the very purpose of consolidation, thus:

> The record shows that PNB's petition was filed on May 26, 2006, and remains pending after three (3) years, despite the summary nature of the petition. Obviously, the consolidation only delayed the issuance of the desired writ of possession. Further, it prejudiced PNB's right to take immediate possession of the property and gave GOTESCO undue advantage, for GOTESCO continues to possess the property during the pendency of the consolidated cases, despite the fact that title to the property is no longer in its name.
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> It should be stressed that GOTESCO was well aware of the expiration of the period to redeem the property. Yet, it did not exercise its right of redemption. There was not even an attempt to redeem the property. Instead, it filed a case for annulment of foreclosure, specific performance, and damages and prayed for a writ of injunction to prevent PNB from consolidating its title. GOTESCO's maneuvering, however, failed, as the CA and this Court refused to issue the desired writ of injunction.
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> Cognizant that the next logical step would be for PNB to seek the delivery of possession of the property, GOTESCO now tries to delay the issuance of writ of possession. It is clear that the motion for consolidation was filed merely to frustrate PNB's right to immediate possession of the property. It is a transparent ploy to delay, if not to prevent, PNB from taking possession of the property it acquired at a public auction ten (10) years ago. This we cannot tolerate.
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> x x x x x x x x x

[32] G.R. No. 183211, June 5, 2009, 588 SCRA 798.

In *De Vera v. Agloro*, this Court upheld the denial by the RTC of a motion for consolidation of a petition for issuance of a writ of possession with a civil action, as it would prejudice the right of one of the parties, *viz.*:

> It bears stressing that consolidation is aimed to obtain justice with the least expense and vexation to the litigants. The object of consolidation is to avoid multiplicity of suits, guard against oppression or abuse, prevent delays and save the litigants unnecessary acts and expense. Consolidation should be denied when prejudice would result to any of the parties or would cause complications, delay, prejudice, cut off, or restrict the rights of a party.[33] (underscoring supplied)

In the recent case of *Espinoza v. United Overseas Bank Phils.*,[34] the Court, in the same manner ruled against the consolidation of the proceedings for the issuance of a writ of possession with that for the declaration of nullity of a foreclosure sale on the ground that it would run counter to the purpose of consolidation:

> In this case, title to the litigated property had already been consolidated in the name of respondent, making the issuance of a writ of possession a matter of right. Consequently, the consolidation of the petition for the issuance of a writ of possession with the proceedings for nullification of foreclosure would be highly improper. Otherwise, not only will the very purpose of consolidation (which is to avoid unnecessary delay) be defeated but the procedural matter of consolidation will also adversely affect the substantive right of possession as an incident of ownership.[35]

Indeed, the consolidation of actions is addressed to the sound discretion of the court and its action in consolidating will not be disturbed in the absence of manifest abuse of discretion.[36] Grave

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[33] *Id.* at 804-806.

[34] G.R. No. 175380, March 22, 2010, 616 SCRA 353.

[35] *Id.* at 361.

[36] *Teston v. Development Bank of the Philippines*, *supra* note 19 at 229-230, citing *De Vera v. Agloro*, 489 Phil. 185 (2005).

abuse of discretion defies exact definition, but it generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[37]

In this particular case, however, the exercise of such discretion by the CA in ordering the consolidation of the Deutsche Bank AG Petition and the Vitarich Petition was less than judicious considering that the two cases were not intimately and substantially related.

Lest it be misunderstood, the CA may prescribe reasonable rules governing assignment of cases with similar questions of law or facts to one justice. In case of consolidation, however, it may be effected only if the said cases are related. Needless to state, assignment is different from consolidation.

WHEREFORE, the petition is **GRANTED**. The March 12, 2010 and the July 19, 2010 Resolutions of the Court of Appeals in CA-G.R. SP No. 111556 are **REVERSED** and **SET ASIDE**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perlas-Bernabe, JJ.,* concur.

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[37] *People of the Philippines v. Tan*, G.R. No. 167526, July 26, 2010, 625 SCRA 388, 397; *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 514-515, citing *People v. Court of Appeals*, 368 Phil. 169, 180 (1999).

SECOND DIVISION

[G.R. No. 197540. February 27, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DINNES OLASO and ROLLY ANGELIO,** *accused.* **ROLLY ANGELIO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; CONSPIRACY; WHEN ESTABLISHED.— The presence of conspiracy may be inferred from the circumstances where all the accused acted in concert at the time of the commission of the offense. Conspiracy is sufficiently established when the concerted acts show the same purpose or common design and are united in its execution. Moreover, when there is conspiracy, it is not important who delivered the fatal blow since the act of one is considered the act of all. It matters not who among the accused actually killed the victim as each of the accused is equally guilty of the crime charged.

2. ID.; ID.; TREACHERY; ELEMENTS.— There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from the defense which the offended party might make. To establish treachery, two elements must concur: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means of attack employed.

3. ID.; ID.; MURDER; CRIME COMMITTED IS MURDER WHEN THE ATTENDANT CIRCUMSTANCES OF TREACHERY ARE PRESENT; CASE AT BAR.— The records show that the victim was attacked while driving his tricycle. Similarly, the autopsy findings show the lack of defensive wounds on the victim's body which indicated how sudden and unexpected the attack had been and how the unsuspecting victim was unable to put up any defense. These same records also show that the attack was the result of

deliberate and careful planning between the appellant and Olaso, as demonstrated by the evidence showing: (1) the designation of the respective roles that the two men would play in committing the crime; and (2) the act of carrying a weapon to be used against the victim. Treachery can be clearly inferred under the circumstances of the perpetrators' plan which ensured the execution of the killing without risk of any possible harm to the appellant and Olaso. Accordingly, we find that the records amply support with moral certainty the appellant's guilt for the crime of murder.

4. ID.; ID.; ID.; IMPOSABLE PENALTY.— Murder was committed, considering the use of treachery in a killing that does not fall within the definition of parricide under Article 246 of the Code. Thus, the RTC and the CA correctly imposed the penalty of *reclusion perpetua* on the appellant, absent any attendant mitigating or aggravating circumstances. In this regard, we also uphold the CA's award of ₱50,000.00 as moral damages for the death of the victim. However, we modify the other awards given by the CA to conform to prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BRION, *J.*:

This is an appeal from the decision[1] dated February 24, 2011 of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 03770. The CA affirmed with modification the decision[2] dated August 1, 2008 of the Regional Trial Court (*RTC*), Branch 122, Caloocan City, in Criminal Case No. C-71776, convicting Rolly Angelio

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[1] Penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Josefina Guevara-Salonga (retired) and Mariflor P. Punzalan Castillo; *rollo*, pp. 2-15.

[2] Penned by Presiding Judge Calixtro O. Adriatico; CA *rollo*, pp. 13-19.

(*appellant*) of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.[3] The CA modified the RTC decision by ordering the appellant to indemnify the heirs of Narciso Patingo (*victim*) in the amounts of ₱75,000.00 as civil indemnity *ex delicto*, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages and ₱25,000.00 as exemplary damages.[4]

The Facts

The appellant and one Dinnes Olaso[5] were charged with murder under the following information:

> That on or about the 25th day of May 2004, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually aiding with (sic) one another, without any justifiable cause, with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault and stab with bladed weapons on the vital parts of his body one **NARCISO PATINGO *Y* CAMAYMAYAN,** thereby inflicting upon the latter serious physical injuries, which injuries directly caused the victim's death.
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> CONTRARY TO LAW.[6] (emphasis supplied)

Only the appellant was apprehended and when arraigned, he pleaded not guilty to the charge. Trial on the merits thereafter ensued. The prosecution's case was anchored on the eyewitness testimony of the victim's brother, Jimmy Patingo (*eyewitness*), who saw the appellant and Olaso flag down the tricycle driven by the victim. According to the eyewitness, the appellant rode at the back of the driver's seat while Olaso went inside the tricycle. The appellant suddenly embraced the victim while Olaso repeatedly stabbed him. Both the appellant and Olaso fled when they saw the eyewitness approaching. The victim died on his way to the hospital. The eyewitness testified that he

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[3] *Supra* note 1, at 14.

[4] *Ibid.*

[5] At large.

[6] *Supra* note 1, at 5.

incurred expenses in the amount of ₱120,000.00 for the burial and wake of the victim.

The autopsy report showed that the victim suffered stab and incise wounds located mostly on the left portion of his body.[7] Two stab wounds were inflicted on his heart.[8] The victim died due to loss of blood secondary to multiple stab wounds in the trunk.[9]

The appellant denied any participation in the stabbing incident. He claimed that he merely directed Olaso to the victim when he was asked about the identity of the driver of the tricycle that Olaso was then looking for. The appellant admitted that Olaso was his childhood friend but denied any knowledge of the motive behind the stabbing and why he (the appellant) became involved in the case.

In its decision, the RTC found the appellant guilty beyond reasonable doubt of murder based on the qualifying circumstance of treachery. The RTC also ruled that there was conspiracy between the appellant and Olaso to kill the victim. The RTC sentenced the appellant to suffer the penalty of *reclusion perpetua* and ordered him to indemnify the heirs of the victim in the amount of ₱50,000.00.[10]

The CA, on appeal, affirmed the appellant's conviction with modification of the imposed civil liability. The CA rejected the appellant's argument that the inconsistency between the sworn affidavit (that he and Olaso stabbed the victim) and the testimony of the eyewitness (that it was only Olaso who stabbed the victim) created doubt as to his participation in the stabbing. The CA held that the testimony of the eyewitness was only more detailed with respect to the appellant's participation than what was stated in the sworn affidavit. The CA observed that both the sworn

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[7] *Supra* note 2, at 15.

[8] *Ibid.*

[9] *Ibid.*

[10] *Id.* at 19.

affidavit and the testimony of the eyewitness established the collective effort of the appellant and Olaso to kill the victim.[11]

In addition, the CA ruled that the RTC correctly appreciated the attendant conspiracy and treachery in the victim's killing, explaining that the overt acts of the appellant and Olaso demonstrated their clear intent to kill the victim. The CA further held that the appellant's participation in embracing the victim while Olaso repeatedly stabbed him was indispensable in the commission of the crime as it left the victim defenseless and unable to resist the attack.[12]

With respect to the award of damages, the CA increased the civil indemnity *ex delicto* from ₱50,000.00 to ₱75,000.00. The CA also awarded ₱25,000.00 as temperate damages in lieu of actual damages, pursuant to Article 2224 of the Civil Code, as amended. Likewise, the CA awarded ₱50,000.00 as moral damages, holding that the award was mandatory in a murder case, and ₱25,000.00 as exemplary damages, since the killing was attended with treachery.

Hence, the present appeal.

The Issues

The appellant attacks his conviction by raising two issues involving the appreciation of the testimony of the eyewitness on the extent of his participation and the nature of the crime committed.

The Office of the Solicitor General (*OSG*) maintains the credibility of the narration made by the eyewitness against whom no ill-motive was established. The OSG insists that the extent of the appellant's participation as co-conspirator in the killing of the victim was clearly proven by the evidence. Likewise fully established was the treacherous manner in the way the two men ganged up and killed the victim through their concerted efforts.

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[11] *Rollo*, pp. 5-6.

[12] *Id.* at 9-10.

The Court's Ruling

We find no reason to overturn the conviction of the appellant.

The factual findings of the RTC, when affirmed by the CA, are generally binding and conclusive upon this Court.[13] When the credibility of the eyewitness is at issue, we give due deference and respect to the assessment made by the RTC, absent any showing that it had overlooked circumstances that would have affected the final outcome of the case.[14] Thus, once a guilty verdict has been rendered, the appellant has the burden to clearly prove on appeal that errors in the appreciation of the evidence committed by the lower courts.

We agree with the CA's finding giving credence to the eyewitness' account which firmly and positively identified the appellant as one of the perpetrators of the crime. The records failed to show any ill-motive on the part of the eyewitness to falsely testify against the appellant. On the other hand, the appellant draws attention to the inconsistent statements made by the eyewitness in his sworn affidavit and in his court testimony regarding his participation in the crime. "It is settled that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit [the said witness] since *ex parte* affidavits are generally incomplete, and are generally subordinated in importance to testimony in open court."[15] In other words, the existence of discrepancies between the sworn affidavit and the testimony of the eyewitness in court does not render his account of the antecedent events unreliable.

In this case, the inconsistencies pointed out are too trivial to have any material bearing in the determination of the appellant's guilt. We take note that the eyewitness' sworn affidavit and

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[13] *People of the Philippines v. Alvin del Rosario*, G.R. No. 189580, February 9, 2011.

[14] *Ibid.*

[15] *People v. Mationg,* 407 Phil. 771, 788 (2001).

court testimony implicated the appellant in the killing of the victim. Moreover, both statements of the eyewitness can be reconciled by a scrutiny of the court testimony which only provided a more detailed account of the antecedent events and of the appellant's actual participation in killing the victim.

We also find that the inconsistencies pointed out to be inconsequential, given the presence of conspiracy between the appellant and Olaso in killing the victim. "Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."[16] The presence of conspiracy may be inferred from the circumstances where all the accused acted in concert at the time of the commission of the offense.[17] Conspiracy is sufficiently established when the concerted acts show the same purpose or common design and are united in its execution.[18] Moreover, when there is conspiracy, it is not important who delivered the fatal blow since the act of one is considered the act of all.[19] It matters not who among the accused actually killed the victim as each of the accused is equally guilty of the crime charged.[20]

As testified to by the eyewitness, the overt acts of the appellant and Olaso showing their conspiracy to kill the victim are: (1) the appellant and Olaso flagged down the tricycle being driven by the victim; (2) the appellant seated himself at the back of the driver's seat while Olaso went inside the tricycle; (3) the appellant and Olaso simultaneously assaulted the victim – the appellant embracing the victim while Olaso stabbed him; and (4) both men immediately fled the scene after the stabbing. The above circumstances plainly show the common design and the unity of purpose between the appellant and Olaso in executing their plan to kill the victim.

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[16] *People v. Bi-Ay, Jr.*, G.R. No. 192187, December 13, 2010, 637 SCRA 828, 836.

[17] *Ibid*.

[18] *Ibid*.

[19] *Id.* at 836-837.

[20] *Ibid*.

On the issue of the nature of the killing, we find that the CA correctly appreciated the qualifying circumstance of treachery. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[21] To establish treachery, two elements must concur: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means of attack employed.[22]

The records show that the victim was attacked while driving his tricycle. Similarly, the autopsy findings show the lack of defensive wounds on the victim's body which indicated how sudden and unexpected the attack had been and how the unsuspecting victim was unable to put up any defense. These same records also show that the attack was the result of deliberate and careful planning between the appellant and Olaso, as demonstrated by the evidence showing: (1) the designation of the respective roles that the two men would play in committing the crime; and (2) the act of carrying a weapon to be used against the victim. Treachery can be clearly inferred under the circumstances of the perpetrators' plan which ensured the execution of the killing without risk of any possible harm to the appellant and Olaso.

Accordingly, we find that the records amply support with moral certainty the appellant's guilt for the crime of murder. Article 248 of the Revised Penal Code (*Code*), as amended, provides:

> [a]ny 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 x x x.

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[21] REVISED PENAL CODE, Article 14, paragraph 16, as amended.

[22] *People of the Philippines v. Bingky Campos and Danny "Boy" Acabo*, G.R. No. 176061, July 4, 2011.

Murder was committed, considering the use of treachery in a killing that does not fall within the definition of parricide under Article 246 of the Code. Thus, the RTC and the CA correctly imposed the penalty of *reclusion perpetua* on the appellant, absent any attendant mitigating or aggravating circumstances.[23] In this regard, we also uphold the CA's award of ₱50,000.00 as moral damages for the death of the victim.[24] However, we modify the other awards given by the CA to conform to prevailing jurisprudence.

First, the award of civil indemnity is reduced from ₱75,000.00 to ₱50,000.00. We held in *People of the Philippines v. David Maningding*[25] that when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, the proper amount should be ₱50,000.00 as civil indemnity.

Second, we increase the award of temperate damages from ₱25,000.00 to ₱30,000.00 in accordance with current jurisprudence.[26]

And lastly, we increase the award of exemplary damages from ₱25,000.00 to ₱30,000.00 since the killing was attended with treachery.[27]

WHEREFORE, we **AFFIRM** the decision dated February 24, 2011 of the Court of Appeals in CA-G.R. CR HC No. 03770

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[23] The second paragraph of Article 63 of the Code, as amended, provides:

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[24] *People of the Philippines v. David Maningding*, G.R. No. 195665, September 14, 2011.

[25] *Ibid.*, citing *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797, also cited in *People of the Philippines v. Allan Gabrino*, G.R. No. 189981, March 9, 2011; and *People v. Sanchez*, G.R. No. 131116, August 27, 1999, 313 SCRA 254.

[26] *The People of the Philippines v. Melanio Galo, alias "Dodo," etc., et al.*, G.R. No. 187497, October 12, 2011.

[27] *People of the Philippines v. Arnold Pelis*, G.R. No. 189328, February 21, 2011.

finding appellant Rolly Angelio guilty beyond reasonable doubt of murder. We **MODIFY** the awards of damages in that appellant Rolly Angelio is **ORDERED** to **PAY** the heirs of the victim Narciso Patingo the following amounts:

1) ₱50,000.00 as civil indemnity;
2) ₱50,000.00 as moral damages;
3) ₱30,000.00 as temperate damages; and
4) ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

EN BANC

[G.R. No. 192565. February 28, 2012]

UNION BANK OF THE PHILIPPINES and DESI TOMAS, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; VENUE; VENUE IS AN ESSENTIAL ELEMENT OF JURISDICTION; RATIONALE.— Venue is an essential element of jurisdiction in criminal cases. It determines not only the place where the criminal action is to be instituted, but also the court that has the jurisdiction to try and hear the case. The reason for this rule is two-fold. ***First***, the jurisdiction of trial courts is limited to well-defined territories such that a trial court can only hear and try cases involving crimes committed within its territorial jurisdiction. ***Second***, laying the venue in the *locus criminis* is

grounded on the necessity and justice of having an accused on trial in the municipality of province where witnesses and other facilities for his defense are available. Unlike in civil cases, **a finding of improper venue in criminal cases carries jurisdictional consequences**.

2. ID.; ID.; ID.; THE VENUE AND JURISDICTION OVER CRIMINAL CASES SHOULD NOT ONLY BE IN THE COURT WHERE THE OFFENSE WAS COMMITTED BUT ALSO WHERE ANY OF ITS ESSENTIAL INGREDIENTS TOOK PLACE.— In determining the venue where the criminal action is to be instituted and the court which has jurisdiction over it, Section 15(a), Rule 110 of the 2000 Revised Rules of Criminal Procedure x x x should be read in light of Section 10, Rule 110 of the 2000 Revised Rules of Criminal Procedure x x x Both provisions categorically place the venue and jurisdiction over criminal cases *not only in the court where the offense was committed, but also where any of its essential ingredients took place*. In other words, the venue of action and of jurisdiction are deemed sufficiently alleged where the Information states that the offense was committed or some of its essential ingredients occurred at a place within the territorial jurisdiction of the court.

3. ID.; CIVIL PROCEDURE; CERTIFICATE AGAINST FORUM SHOPPING; MANNER OF PREPARATION AND CONTENTS THEREOF.— Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended, contains the requirement for a Certificate against Forum Shopping. The Certificate against Forum Shopping can be made either by a statement under oath in the complaint or initiatory pleading asserting a claim or relief; it may also be in a sworn certification annexed to the complaint or initiatory pleading. In both instances, the affiant is required to execute a statement under oath before a duly commissioned notary public or any competent person authorized to administer oath that: (a) he or she has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his or her knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he or she should thereafter learn that the same or similar

action or claim has been filed or is pending, he or she shall report that fact within five days therefrom to the court wherein his or her aforesaid complaint or initiatory pleading has been filed.

4. CRIMINAL LAW; REVISED PENAL CODE; PERJURY; ELEMENTS; PRESENT IN CASE AT BAR.— The elements of perjury under Article 183 are: (a) That the accused made a *statement under oath or executed an affidavit* upon a *material matter*. (b) That the statement or affidavit was made *before a competent officer*, authorized to receive and administer oath. (c) That in the statement or affidavit, the accused made a *willful and deliberate assertion of a falsehood*. (d) That the sworn statement or affidavit containing the falsity is *required by law or made for a legal purpose*. x x x In the present case, the Certification against Forum Shopping was made integral parts of two complaints for sum of money with prayer for a writ of replevin against the respondent spouses Eddie Tamondong and Eliza B. Tamondong, who, in turn, filed a complaint-affidavit against Tomas for violation of Article 183 of the RPC. As alleged in the Information that followed, ***the criminal act charged was for the execution by Tomas of an affidavit that contained a falsity***. Under the circumstances, Article 183 of the RPC is indeed the applicable provision.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PERJURY COMMITTED THROUGH MAKING OF A FALSE AFFIDAVIT OR THROUGH FALSE TESTIMONY UNDER OATH IN A PROCEEDING; PROPER VENUE THEREOF. — [T]he crime of perjury committed *through the making of a false affidavit* under Article 183 of the RPC is committed at the time the affiant subscribes and swears to his or her affidavit since it is at that time that all the elements of the crime of perjury are executed. When the crime is committed through false testimony under oath in a proceeding that is neither criminal nor civil, venue is at the place where the testimony under oath is given. If in lieu of or as supplement to the actual testimony made in a proceeding that is neither criminal nor civil, a written sworn statement is submitted, venue may either be at the place where the sworn statement is submitted or where the oath was taken as the taking of the oath and the submission are both material ingredients of the crime committed. In all

cases, determination of venue shall be based on the acts alleged in the Information to be constitutive of the crime committed.

APPEARANCES OF COUNSEL

Macalino and Associates for petitioners.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

We review in this Rule 45 petition, the decision[1] of the Regional Trial Court, Branch 65, Makati City (*RTC-Makati City*) in Civil Case No. 09-1038. The petition seeks to reverse and set aside the RTC-Makati City decision dismissing the petition for *certiorari* of petitioners Union Bank of the Philippines (*Union Bank*) and Desi Tomas (collectively, *the petitioners*). The RTC found that the Metropolitan Trial Court, Branch 63, Makati City (MeTC-Makati City) did not commit any grave abuse of discretion in denying the motion to quash the information for perjury filed by Tomas.

The Antecedents

Tomas was charged in court for perjury under Article 183 of the Revised Penal Code (RPC) for making a false narration in a Certificate against Forum Shopping. The Information against her reads:

That on or about the 13th day of March 2000 in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make untruthful statements under oath upon a material matter before a competent person authorized to administer oath which the law requires to wit: said accused stated in the Verification/Certification/Affidavit of merit of a complaint for sum of money with prayer for a *writ* of replevin docketed as [Civil] Case No. 342-00 of the Metropolitan Trial Court[,] Pasay

[1] Dated April 28, 2010; *rollo*, pp. 137-143.

City, that the Union Bank of the Philippines has not commenced any other action or proceeding involving the same issues in another tribunal or agency, accused knowing well that said material statement was false thereby making a willful and deliberate assertion of falsehood.[2]

The accusation stemmed from petitioner Union Bank's two (2) complaints for sum of money with prayer for a *writ* of replevin against the spouses Eddie and Eliza Tamondong and a John Doe. The **first complaint**, docketed as Civil Case No. 98-0717, was filed before the RTC, Branch 109, Pasay City on April 13, 1998. The **second complaint**, docketed as Civil Case No. 342-000, was filed on March 15, 2000 and raffled to the MeTC, Branch 47, Pasay City. Both complaints showed that Tomas executed and signed the Certification against Forum Shopping. Accordingly, she was charged of deliberately violating Article 183 of the RPC by falsely declaring under oath in the Certificate against Forum Shopping in the second complaint that she did not commence any other action or proceeding involving the same issue in another tribunal or agency.

Tomas filed a Motion to Quash,[3] citing two grounds. *First*, she argued that the venue was improperly laid since it is the Pasay City court (where the Certificate against Forum Shopping was submitted and used) and not the MeTC-Makati City (where the Certificate against Forum Shopping was subscribed) that has jurisdiction over the perjury case. *Second*, she argued that the facts charged do not constitute an offense because: (a) the third element of perjury – the willful and deliberate assertion of falsehood – was not alleged with particularity without specifying what the other action or proceeding commenced involving the same issues in another tribunal or agency; (b) there was no other action or proceeding pending in another court when the second complaint was filed; and (c) she was charged with perjury by giving false testimony while the allegations in the Information make out perjury by making a false affidavit.

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[2] *Id.* at 11.

[3] *Id.* at 29-37.

The MeTC-Makati City denied the Motion to Quash, ruling that it has jurisdiction over the case since the Certificate against Forum Shopping was notarized in Makati City.[4] The MeTC-Makati City also ruled that the allegations in the Information sufficiently charged Tomas with perjury.[5] The MeTC-Makati City subsequently denied Tomas' motion for reconsideration.[6]

The petitioners filed a petition for *certiorari* before the RTC-Makati City to annul and set aside the MeTC-Makati City orders on the ground of grave abuse of discretion. The petitioners anchored their petition on the rulings in *United States v. Canet*[7] and *Ilusorio v. Bildner*[8] which ruled that venue and jurisdiction should be in the place where the false document was presented.

The Assailed RTC Decision

In dismissing the petition for *certiorari*, the RTC-Makati City held:

> [I]nsofar as the petitioner's stance is concerned[,] the more recent case of [Sy Tiong Shiou v. Sy] (GR Nos. 174168 & 179438, March 30, 2009) however, reaffirms what has been the long standing view on the venue with respect to perjury cases. In this particular case[,] the high court reiterated the rule that the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed, or where any of its essential ingredients occurred. It went on to declare that since the subject document[,] the execution of which was the subject of the charge[,] was subscribed and sworn to in Manila[,] then the court of the said territorial jurisdiction was the proper venue of the criminal action[.]
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> x x x Given the present state of jurisprudence on the matter, it is not amiss to state that the city court of Makati City has jurisdiction

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[4] Order dated March 26, 2009; *rollo*, pp. 55-56.

[5] *Id.* at 56.

[6] Order dated August 28, 2009, pp. 69-70.

[7] 30 Phil. 371 (1915).

[8] G.R. Nos. 173935-38, December 23, 2008, 575 SCRA 272.

to try and decide the case for perjury inasmuch as the gist of the complaint itself which constitute[s] the charge against the petitioner dwells solely on the act of **subscribing to a false certification**. On the other hand, the charge against the accused in the case of *Ilusorio v. Bildner, et al.,* based on the complaint-affidavits therein[,] was not simply the execution of the questioned documents but rather the introduction of the false evidence through the subject documents before the court of Makati City.[9] (emphasis ours)

The RTC-Makati City ruled that the MeTC-Makati City did not commit grave abuse of discretion since the order denying the Motion to Quash was based on jurisprudence later than *Ilusorio*. The RTC-Makati City also observed that the facts in *Ilusorio* are different from the facts of the present case. Lastly, the RTC-Makati City ruled that the Rule 65 petition was improper since the petitioners can later appeal the decision in the principal case. The RTC-Makati City subsequently denied the petitioner's motion for reconsideration.[10]

The Petition

The petitioners pray that we reverse the RTC-Makati City decision and quash the Information for perjury against Tomas. The petitioners contend that the *Ilusorio* ruling is more applicable to the present facts than our ruling in *Sy Tiong Shiou v. Sy Chim.*[11] They argued that the facts in *Ilusorio* showed that the filing of the petitions in court containing the false statements was the essential ingredient that consummated the perjury. In *Sy Tiong*, the perjurious statements were made in a General Information Sheet (*GIS*) that was submitted to the Securities and Exchange Commission (*SEC*).

Interestingly, Solicitor General Jose Anselmo I. Cadiz shared the petitioners' view. In his *Manifestation and Motion in lieu of Comment* (which we hereby treat as the Comment to the petition), the Solicitor General also relied on *Ilusorio* and opined

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[9] *Rollo*, pp. 142-143.

[10] Order dated June 9, 2010; *id.* at 154.

[11] G.R. Nos. 174168 and 179438, March 30, 2009, 582 SCRA 517.

that the *lis mota* in the crime of perjury is the deliberate or intentional giving of false evidence in the court where the evidence is material. The Solicitor General observed that the criminal intent to assert a falsehood under oath only became manifest before the MeTC-Pasay City.

The Issue

The case presents to us the issue of what the proper venue of perjury under Article 183 of the RPC should be – Makati City, where the Certificate against Forum Shopping was notarized, or Pasay City, where the Certification was presented to the trial court.

The Court's Ruling

We deny the petition and hold that the MeTC-Makati City is the proper venue and the proper court to take cognizance of the perjury case against the petitioners.

Venue of Action and Criminal Jurisdiction

Venue is an essential element of jurisdiction in criminal cases. It determines not only the place where the criminal action is to be instituted, but also the court that has the jurisdiction to try and hear the case. The reason for this rule is two-fold. ***First***, the jurisdiction of trial courts is limited to well-defined territories such that a trial court can only hear and try cases involving crimes committed within its territorial jurisdiction.[12] ***Second***, laying the venue in the *locus criminis* is grounded on the necessity and justice of having an accused on trial in the municipality of province where witnesses and other facilities for his defense are available.[13]

Unlike in civil cases, **a finding of improper venue in criminal cases carries jurisdictional consequences**. In determining the venue where the criminal action is to be instituted and the court which has jurisdiction over it, Section 15(a), Rule 110 of the 2000 Revised Rules of Criminal Procedure provides:

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[12] *United States v. Cunanan*, 26 Phil. 376 (1913).

[13] *Parulan v. Reyes*, 78 Phil. 855 (1947).

a) Subject to existing laws, the criminal action shall be instituted and tried in the court or municipality or territory **where the offense was committed or where any of its essential ingredients occurred**. [emphasis ours]

The above provision should be read in light of Section 10, Rule 110 of the 2000 Revised Rules of Criminal Procedure which states:

Place of commission of the offense. – The complaint or information is sufficient if it can be understood from its allegations that the offense was committed or some of its essential ingredients occurred at some place within the jurisdiction of the court, unless the particular place where it was committed constitutes an essential element of the offense charged or is necessary for its identification.

Both provisions categorically place the venue and jurisdiction over criminal cases *not only in the court where the offense was committed, but also where any of its essential ingredients took place*. In other words, the venue of action and of jurisdiction are deemed sufficiently alleged where the Information states that the offense was committed or some of its essential ingredients occurred at a place within the territorial jurisdiction of the court.

Information Charging Perjury

Section 5, Rule 7 of the 1997 Rules of Civil Procedure, as amended, contains the requirement for a Certificate against Forum Shopping. The Certificate against Forum Shopping can be made either by a statement under oath in the complaint or initiatory pleading asserting a claim or relief; it may also be in a sworn certification annexed to the complaint or initiatory pleading. In both instances, the affiant is required to execute a statement under oath before a duly commissioned notary public or any competent person authorized to administer oath that: (a) he or she has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his or her knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he or she should thereafter

learn that the same or similar action or claim has been filed or is pending, he or she shall report that fact within five days therefrom to the court wherein his or her aforesaid complaint or initiatory pleading has been filed. In relation to the crime of perjury, the material matter in a Certificate against Forum Shopping is the truth of the required declarations which is designed to guard against litigants pursuing simultaneous remedies in different fora.[14]

In this case, Tomas is charged with the crime of perjury under Article 183 of the RPC for making a false Certificate against Forum Shopping. The elements of perjury under Article 183 are:

a) That the accused made a *statement under oath or executed an affidavit* upon a *material matter*.

(b) That the statement or affidavit was made *before a competent officer*, authorized to receive and administer oath.

(c) That in the statement or affidavit, the accused made a *willful and deliberate assertion of a falsehood*.

(d) That the sworn statement or affidavit containing the falsity is *required by law or made for a legal purpose*.[15] (emphasis ours)

Where the jurisdiction of the court is being assailed in a criminal case on the ground of improper venue, the allegations in the complaint and information must be examined together with Section 15(a), Rule 110 of the 2000 Revised Rules of Criminal Procedure. On this basis, we find that the allegations in the Information sufficiently support a finding that the crime of perjury was committed by Tomas within the territorial jurisdiction of the MeTC-Makati City.

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[14] *Torres v. Specialized Packaging Development Corporation*, G.R. No. 149634, July 6, 2004, 433 SCRA 455.

[15] *Monfort III v. Salvatierra*, G.R. No. 168301, March 5, 2007, 517 SCRA 447, 461.

The first element of the crime of perjury, the execution of the subject Certificate against Forum Shopping was alleged in the Information to have been committed in Makati City. Likewise, the second and fourth elements, requiring the Certificate against Forum Shopping to be under oath before a notary public, were also sufficiently alleged in the Information to have been made in Makati City:

> That on or about the 13th day of March 2000 in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously make untruthful statements under oath upon a material matter before a competent person authorized to administer oath which the law requires to wit: said accused stated in the Verification/Certification/Affidavit x x x.[16]

We also find that the third element of willful and deliberate falsehood was also sufficiently alleged to have been committed in Makati City, not Pasay City, as indicated in the last portion of the Information:

> [S]aid accused stated in the Verification/Certification/Affidavit of merit of a complaint for sum of money with prayer for a *writ* of replevin docketed as [Civil] Case No. 342-00 of the Metropolitan Trial Court[,] Pasay City, that the Union Bank of the Philippines has not commenced any other action or proceeding involving the same issues in another tribunal or agency, accused knowing well that said material statement was false thereby making a willful and deliberate assertion of falsehood.[17] (underscoring ours)

Tomas' deliberate and intentional assertion of falsehood was allegedly shown when she made the false declarations in the Certificate against Forum Shopping before a notary public in Makati City, despite her knowledge that the material statements she subscribed and swore to were not true. Thus, Makati City is the proper venue and MeTC-Makati City is the proper court to try the perjury case against Tomas, pursuant to Section 15(a),

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[16] *Supra* note 2.

[17] *Ibid.*

Rule 110 of the 2000 Revised Rules of Criminal Procedure as all the essential elements constituting the crime of perjury were committed within the territorial jurisdiction of Makati City, not Pasay City.

Referral to the En Banc

The present case was referred to the *En Banc* primarily to address the seeming conflict between the division rulings of the Court in the *Ilusorio* case that is cited as basis of this petition, and the *Sy Tiong* case that was the basis of the assailed RTC-Makati City ruling.

The Cited *Ilusorio* and *Sy Tiong* Cases

The subject matter of the perjury charge in ***Ilusorio*** involved false statements contained in ***verified petitions filed with the court*** for the issuance of a new owner's duplicate copies of certificates of title. The verified petitions containing the false statements were subscribed and sworn to in Pasig City, but were filed in Makati City and Tagaytay City. The question posed was: which court (Pasig City, Makati City and/or Tagaytay City) had jurisdiction to try and hear the perjury cases?

We ruled that the venues of the action were in Makati City and Tagaytay City, the places where the verified petitions were filed. The Court reasoned out that it was only upon filing that the intent to assert an alleged falsehood became manifest and where the alleged untruthful statement found relevance or materiality. We cited as jurisprudential authority the case of *United States. v. Cañet*[18] which ruled:

> It is immaterial where the affidavit was subscribed and sworn, so long as it appears from the information that the defendant, by means of such affidavit, "swore to" and knowingly submitted false evidence, material to a point at issue in a judicial proceeding pending in the Court of First Instance of Iloilo Province. The gist of the offense charged is not the making of the affidavit in Manila, but the intentional giving of false evidence in the Court of First Instance of Iloilo Province by means of such affidavit. [emphasis and underscoring deleted]

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[18] *Supra* note 7, at 378.

In ***Sy Tiong***, the perjured statements were made in a GIS which was subscribed and sworn to in Manila. We ruled that the proper venue for the perjury charges was in Manila where the GIS was subscribed and sworn to. We held that the perjury was consummated in Manila where the false statement was made. As supporting jurisprudence, we cited the case of *Villanueva v. Secretary of Justice*[19] that, in turn, cited an American case entitled *U.S. v. Norris*.[20] We ruled in *Villanueva* that –

> Perjury is an obstruction of justice; its perpetration well may affect the dearest concerns of the parties before a tribunal. Deliberate material falsification under oath constitutes the crime of perjury, and the crime is complete when a witness' statement has once been made.

The Crime of Perjury: A Background

To have a better appreciation of the issue facing the Court, a look at the historical background of how the crime of perjury (specifically, Article 183 of the RPC) evolved in our jurisdiction.

The RPC penalizes three forms of false testimonies. The ***first*** is false testimony for and against the defendant in a criminal case (Articles 180 and 181, RPC); the ***second*** is false testimony in a civil case (Article 182, RPC); and the ***third*** is false testimony in other cases (Article 183, RPC). **Based on the Information filed, the present case involves the making of an untruthful statement in an affidavit on a material matter**.

These RPC provisions, however, are not really the bases of the rulings cited by the parties in their respective arguments. The cited *Ilusorio* ruling, although issued by this Court in 2008, harked back to the case of *Cañet* which was decided in 1915, *i.e., before the present RPC took effect*.[21] *Sy Tiong*, on the

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[19] G.R. No. 162187, November 18, 2005, 475 SCRA 495, 512.

[20] 300 U.S. 564 (1937). The perjury was based on a false testimony by the defendant at the hearing before the Senate Committee in Nebraska.

[21] The Penal Code for the Philippines which took effect from July 19, 1887 to December 31, 1931.

other hand, is a 2009 ruling that cited *Villanueva*, a 2005 case that in turn cited *United States v. Norris*, a 1937 American case. Significantly, unlike *Canet, Sy Tiong* is entirely based on rulings rendered after the present RPC took effect.[22]

The perjurious act in ***Cañet*** consisted of an information charging **perjury through the *presentation in court*** of a motion accompanied by a false sworn affidavit. At the time the *Cañet* ruling was rendered, the prevailing law on perjury and the rules on prosecution of criminal offenses were found in Section 3, Act No. 1697 of the Philippine Commission, and in Subsection 4, Section 6 of General Order No. 58[23] for the procedural aspect.

Section 3 of Act No. 1697 reads:

> Sec. 3. Any person who, having taken oath before a competent tribunal, officer, or person, in any case in which a law of the Philippine Islands authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, disposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand pesos and by imprisonment for not more than five years; and shall moreover, thereafter be incapable of holding any public office or of giving testimony in any court of the Philippine Islands until such time as the judgment against him is reversed.

This law was copied, with the necessary changes, from Sections 5392[24] and 5393[25] of the Revised Statutes of the United

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[22] Took effect on January 1, 1932.

[23] Entitled "The Law on Criminal Procedure" which took effect on April 23, 1900.

[24] Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury.

[25] The law refers to subornation of perjury.

States.[26] *Act No. 1697 was intended to make the mere execution of a false affidavit punishable in our jurisdiction.*[27]

In turn, Subsection 4, Section 6 of General Order No. 58 provided that the venue shall be the court of the place where the crime was committed.

As applied and interpreted by the Court in *Cañet*, perjury was committed by the act of *representing a false document in a judicial proceeding*.[28] The venue of action was held by the Court to be at the place where the false document was presented since the presentation was the act that consummated the crime.

The annotation of Justices Aquino and Griño-Aquino in their textbook on the RPC[29] interestingly explains the history of the perjury provisions of the present RPC and traces as well the linkage between Act No. 1697 and the present Code. To quote these authors:[30]

> Art. 180 was taken from art. 318 of the Old Penal Code and art. 154 of Del Pan's Proposed Correctional Code, while art. 181 was taken from art. 319 of the old Penal Code and Art. 157 of Del Pan's Proposed Correctional Code. Said arts. 318 and 319, together with art. 321 of the old Penal Code, were impliedly repealed by Act 1697, the Perjury Law, passed on August 23, 1907, which in turn was expressly repealed by the Administrative Code of 1916, Act 2657. In view of the express repeal of Act 1697, arts. 318 and 321 of the old Penal Code were deemed revived. However, Act 2718 expressly revived secs. 3 and 4 of the Perjury Law. Art. 367 of the Revised Penal Code repealed Act Nos. 1697 and 2718.
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> It should be noted that perjury under Acts 1697 and 2718 includes false testimony, whereas, under the Revised Penal Code, false testimony includes perjury. Our law on false testimony is of Spanish

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[26] *United States v. Concepcion*, 13 Phil. 424 (1909).

[27] *Id.* at 428-429.

[28] *People v. Cruz, et al.*, 197 Phil. 815 (1982).

[29] Ramon C. Aquino and Carolina Griño-Aquino, *2 THE REVISED PENAL CODE*, 1997 ed.

[30] *Id.* at 301-302.

origin, but our law on perjury (art. 183 taken from sec. 3 of Act 1697) is derived from American statutes. *The provisions of the old Penal Code on false testimony embrace perjury committed in court or in some contentious proceeding, while perjury as defined in Act 1697 includes the making of a false affidavit.* The provisions of the Revised Penal Code on false testimony "are more severe and strict than those of Act 1697" on perjury. [italics ours]

With this background, it can be appreciated that Article 183 of the RPC which provides:

> The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall ***testify under oath***, or ***make an affidavit***, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires. [emphasis supplied; emphases ours]

in fact refers to either of two punishable acts – (1) falsely testifying under oath in a proceeding *other than a criminal or civil case*; and (2) making a *false affidavit before a person authorized to administer an oath* on any material matter where the law requires an oath.

As above discussed, *Sy Tiong* – decided under Article 183 of the RPC – essentially involved perjured statements made in a GIS that was subscribed and sworn to in Manila and submitted to the SEC in Mandaluyong City. Thus, the case involved the *making of an affidavit*, not an actual testimony in a proceeding that is neither criminal nor civil. From this perspective, the *situs of the oath, i.e., the place where the oath was taken, is the place where the offense was committed*. By implication, the proper venue would have been the City of Mandaluyong – the site of the SEC – had the charge involved an actual testimony made before the SEC.

In contrast, *Cañet* involved the *presentation in court* of a motion supported and accompanied by an affidavit that contained a falsity. With Section 3 of Act No. 1697 as basis, the issue related to the submission of the affidavit in a judicial proceeding. *This came at a time when Act No. 1697 was the perjury law,*

and made no distinction between judicial and other proceedings, and at the same time separately penalized the making of false statements under oath (unlike the present RPC which separately deals with false testimony in criminal, civil and other proceedings, while at the same time also penalizing the making of false affidavits). Understandably, the venue should be the place where the submission was made to the court or the *situs* of the court; it could not have been the place where the affidavit was sworn to simply because this was not the offense charged in the Information.

The case of *Ilusorio* cited the *Cañet* case as its authority, in a situation where the sworn petitions filed in court for the issuance of duplicate certificates of title (that were allegedly lost) were the cited sworn statements to support the charge of perjury for the falsities stated in the sworn petitions. The Court ruled that the proper venue should be the Cities of Makati and Tagaytay because it was in the courts of these cities "where the intent to assert an alleged falsehood became manifest and where the alleged untruthful statement finds relevance or materiality in deciding the issue of whether new owner's duplicate copies of the [Certificate of Condominium Title] and [Transfer Certificates of Title] may issue."[31] To the Court, "whether the perjurious statements contained in the four petitions were subscribed and sworn in Pasig is immaterial, the gist of the offense of perjury being the intentional giving of false statement,"[32] citing *Cañet* as authority for its statement.

The statement in *Ilusorio* may have partly led to the present confusion on venue because of its very categorical tenor in pointing to the considerations to be made in the determination of venue; it leaves the impression that the place where the oath was taken is not at all a material consideration, forgetting that Article 183 of the RPC clearly speaks of two situations while Article 182 of the RPC likewise applies to false testimony in civil cases.

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[31] *Ilusorio v. Bildner, supra* note 8, at 283.

[32] *Id.* at 284.

The *Ilusorio* statement would have made perfect sense had the basis for the charge been Article 182 of the RPC, on the assumption that the petition itself constitutes a false testimony in a civil case. The *Cañet* ruling would then have been completely applicable as the sworn statement is used in a civil case, although no such distinction was made under *Cañet* because the applicable law at the time (Act No. 1697) did not make any distinction.

If Article 183 of the RPC were to be used, as what in fact appears in the *Ilusorio* ruling, then only that portion of the article, referring to the making of an affidavit, would have been applicable as the other portion refers to false testimony in *other proceedings* which a judicial petition for the issuance of a new owner's duplicate copy of a Certificate of Condominium Title is not because it is a civil proceeding in court. *As a perjury based on the making of a false affidavit, what assumes materiality is the site where the oath was taken as this is the place where the oath was made, in this case, Pasig City.*

Procedurally, the rule on venue of criminal cases has been subject to various changes from the time General Order No. 58 was replaced by Rules 106 to 122 of the Rules of Court on July 1, 1940. Section 14, Rule 106 of the Rules of Court provided for the rule on venue of criminal actions and *it expressly included, as proper venue, the place where any one of the essential ingredients of the crime took place.* This change was followed by the passage of the 1964 Rules of Criminal Procedure,[33] the 1985 Rules of Criminal Procedure,[34] and the 2000 Revised Rules of Criminal Procedure which all adopted the 1940 Rules of

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[33] Section 14, Rule 110. *Place where action is to be instituted.* –

(a) In all criminal prosecutions the action shall be instituted and tried in the Court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place.

[34] Section 15, Rule 110. *Place where action is to be instituted.* –

(a) Subject to existing laws, in all criminal prosecutions the action shall be instituted and tried in the court of the municipality or territory wherein the offense was committed or any one of the essential ingredients thereof took place.

Criminal Procedure's expanded venue of criminal actions. Thus, the venue of criminal cases is *not only in the place where the offense was committed, but also where any of its essential ingredients took place.*

In the present case, the Certification against Forum Shopping was made integral parts of two complaints for sum of money with prayer for a writ of replevin against the respondent spouses Eddie Tamondong and Eliza B. Tamondong, who, in turn, filed a complaint-affidavit against Tomas for violation of Article 183 of the RPC. As alleged in the Information that followed, ***the criminal act charged was for the execution by Tomas of an affidavit that contained a falsity***.

Under the circumstances, Article 183 of the RPC is indeed the applicable provision; thus, jurisdiction and venue should be determined on the basis of this article which penalizes one who "make[s] an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires." ***The constitutive act of the offense is the making of an affidavit***; thus, the criminal act is consummated when the statement containing a falsity is subscribed and sworn before a duly authorized person.

Based on these considerations, we hold that our ruling in *Sy Tiong* is more in accord with Article 183 of the RPC and Section 15(a), Rule 110 of the 2000 Revised Rules of Criminal Procedure. To reiterate for the guidance of the Bar and the Bench, the crime of perjury committed *through the making of a false affidavit* under Article 183 of the RPC is committed at the time the affiant subscribes and swears to his or her affidavit since it is at that time that all the elements of the crime of perjury are executed. When the crime is committed through false testimony under oath in a proceeding that is neither criminal nor civil, venue is at the place where the testimony under oath is given. If in lieu of or as supplement to the actual testimony made in a proceeding that is neither criminal nor civil, a written sworn statement is submitted, venue may either be at the place where the sworn statement is submitted or where the oath was taken as the taking of the oath and the submission are both

material ingredients of the crime committed. In all cases, determination of venue shall be based on the acts alleged in the Information to be constitutive of the crime committed.

WHEREFORE, premises considered, we hereby **DENY** the petition for lack of merit. Costs against the petitioners.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Del Castillo, J., on official leave.

Sereno, J., on leave.

EN BANC

[G.R. No. 192984. February 28, 2012]

ROLANDO D. LAYUG, *petitioner, vs.* **COMMISSION ON ELECTIONS, MARIANO VELARDE (*alias* "BROTHER MIKE") and BUHAY PARTY-LIST,** *respondents.*

SYLLABUS

1. POLITICAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); THE HRET DOES NOT HAVE JURISDICTION OVER QUALIFICATIONS OF THE PARTY LIST; RATIONALE; CASE AT BAR.— Section 17, Article VI of the 1987 Constitution provides that the House of Representatives Electoral Tribunal (**HRET**) shall be the *sole* judge of all contests relating to the election, returns, and qualifications of its Members. Section 5 (1) of the same Article identifies who

the "members" of the House are: x x x Clearly, the members of the House of Representatives are of two kinds: (1) members who shall be elected from legislative districts; and (2) those who shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations. In this case, Buhay Party-List was entitled to two seats in the House that went to its first two nominees, Mariano Michael DM. Velarde, Jr. and William Irwin C. Tieng. On the other hand, Brother Mike, being the fifth nominee, did not get a seat and thus had not become a member of the House of Representatives. Indubitably, the **HRET** has no jurisdiction over the issue of Brother Mike's qualifications. Neither does the **HRET** have jurisdiction over the qualifications of Buhay Party-List, as it is vested by law, specifically, the *Party-List System Act*, upon the COMELEC. Section 6 of said *Act* states that "the COMELEC may *motu proprio* or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition xxx." Accordingly, in the case of *Abayon vs. HRET*, We ruled that the **HRET** did not gravely abuse its discretion when it dismissed the petitions for *quo warranto* against *Aangat Tayo* party-list and *Bantay* party-list insofar as they sought the disqualifications of said party-lists. Thus, it is the Court, under its power to review decisions, orders, or resolutions of the COMELEC provided under Section 7, Article IX-A of the 1987 Constitution and Section 1, Rule 37 of the COMELEC Rules of Procedure that has jurisdiction to hear the instant petition.

2. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; EVERY PLEADING MUST BE SIGNED BY THE PARTY OR COUNSEL REPRESENTING HIM, STATING IN EITHER CASE HIS ADDRESS WHICH SHOULD NOT BE A POST OFFICE BOX; EFFECT OF VIOLATION; CASE AT BAR.— A party may sue or defend an action *pro se*. Under Section 3, Rule 7 of the Rules of Court, "(e)very pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box." x x x From the fact alone that the address which Layug furnished the COMELEC was incorrect, his pretensions regarding the validity of the proceedings and promulgation of the Resolution dated June 15, 2010 for being in violation of his constitutional

right to due process are doomed to fail. His refusal to rectify the error despite knowledge thereof impels Us to conclude that he deliberately stated an inexistent address with the end in view of delaying the proceedings upon the plea of lack of due process. As the COMELEC aptly pointed out, Layug contemptuously made a mockery of election laws and procedure by appearing before the Commission by himself or by different counsels when he wants to, and giving a fictitious address to ensure that he does not receive mails addressed to him. He cannot thus be allowed to profit from his own wrongdoing. To rule otherwise, considering the circumstances in the instant case, would place the date of receipt of pleadings, judgments and processes within Layug's power to determine at his pleasure. This, We cannot countenance. It bears stressing that the finality of a decision or resolution is a jurisdictional event which cannot be made to depend on the convenience of a party. Decisions or resolutions must attain finality at some point and its attainment of finality should not be made dependent on the will of a party.

3. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; *MANDAMUS*, AS A REMEDY CANNOT COMPEL THE DOING OF AN ACT INVOLVING THE EXERCISE OF DISCRETION; APPLICATION IN CASE AT BAR.— *Mandamus*, as a remedy, is available to compel the doing of an act specifically enjoined by law as a duty. It cannot compel the doing of an act involving the exercise of discretion one way or the other. In this case, the COMELEC *En Banc* cannot be compelled to resolve Layug's Motion for Reconsideration of the Resolution dated June 15, 2010 that was filed on July 28, 2010 after said Resolution had already attained finality. In fact, the COMELEC Second Division denied the same Motion in its Order dated August 4, 2010 precisely for the reason that it was filed out of time. It should likewise be pointed out that the aforesaid Motion for Reconsideration was filed without the requisite notice of hearing. We have held time and again that the failure to comply with the mandatory requirements under Sections 4 and 5 of Rule 15 of the Rules of Court renders the motion defective. As a rule, a motion without a notice of hearing is considered *pro forma*. None of the acceptable exceptions obtain in this case. Moreover, the Motion was filed by a new counsel – Evasco, Abinales and Evasco Law Offices – without a valid substitution or withdrawal of the former counsel. x x x Considering, therefore, Layug's

utter disregard of the rules of procedure for which he deserves no empathy, the Court finds that the COMELEC exercised its discretion within the bounds of the law thus warranting the dismissal of the instant case.

APPEARANCES OF COUNSEL

Evasco Abineles & Evasco Law Offices for petitioner.
The Solicitor General for public respondent.
A.H. Labay & Associates Law Office for private respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

In this Petition for *Certiorari* under Rule 65 of the Rules of Court with prayer for temporary restraining order and preliminary injunction, petitioner Rolando D. Layug seeks to (1) enjoin the implementation of the Resolution[1] of the Commission on Elections (COMELEC) Second Division, dated June 15, 2010, which denied his petition to disqualify respondent Buhay Hayaan Yumabong Party-List (hereinafter Buhay Party-List) from participating in the 2010 Party-List Elections, and Mariano Velarde (Brother Mike) from being its nominee; (2) nullify Buhay Party-List's proclamation under COMELEC *En Banc* NBC Resolution[2] No.10-034 dated July 30, 2010; and (3) compel the COMELEC *En Banc* to rule on his Motion for Reconsideration[3] dated 28 July 2010.

The Facts

On March 31, 2010, petitioner Rolando D. Layug (Layug), in his capacity as a taxpayer and concerned citizen, filed *pro se* a Petition to Disqualify[4] (**SPA No. 10-016** [**DCN**]**)** Buhay Party-

[1] *Rollo*, pp. 34–38.

[2] *Id.* at 39–40.

[3] *Id.* at 19–30.

[4] *Id.* at 42–48.

List from participating in the May 10, 2010 elections, and Brother Mike from being its nominee. He argued that Buhay Party-List is a mere "extension of the El Shaddai," which is a religious sect. As such, it is disqualified from being a party-list under Section 5, Paragraph 2, Article VI of the 1987 Constitution,[5] as well as Section 6, Paragraph 1 of Republic Act (R.A.) No. 7941[6], otherwise known as the *"Party-List System Act."* Neither does Brother Mike, who is allegedly a billionaire real estate businessman and the spiritual leader of El Shaddai, qualify as "one who belongs to the marginalized and underrepresented sector xxx," as required of party-list nominees under Section 6 (7) of COMELEC Resolution No. 8807[7], the "*Rules on Disqualification Cases Against Nominees of Party-List Groups/ Organizations Participating in the May 10, 2010 Automated National and Local Elections.*"

In their Answer[8] thereto, Buhay Party-List and Brother Mike claimed that Buhay Party-List is not a religious sect but a

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[5] Section 5 (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law except the religious sector.

[6] Section 6. *Refusal and/or Cancellation of Registration.* The COMELEC may *motu proprio* or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, or organization or coalition on any of the following grounds:

(1) It is a religious sect or denomination, organization or association organized for religious purposes.

x x x x x x x x x

[7] Section 6. *Qualification of nominees.* – A party-list nominee must be:

x x x x x x x x x

7. One who belongs to the marginalized and underrepresented sector/s, the sectoral party, organization, political party or coalition he seeks to represent;

x x x x x x x x x

[8] *Rollo,* pp. 132–146.

political party possessing all the qualifications of a party-list. It is composed of groups for the elderly, the women, the youth, the handicapped, as well as the professionals, and Brother Mike belongs to the marginalized and underrepresented elderly group. They likewise argued that nominees from a political party such as Buhay Party-List need not even come from the marginalized and underrepresented sector.

Record shows that Layug received a copy of the aforesaid Answer only at the hearing conducted on April 20, 2010 after his lawyer, Atty. Rustico B. Gagate, manifested that his client has not received the same. Counsel for private respondents explained that their liaison officer found Layug's given address – #70 Dr. Pilapil St., Barangay San Miguel, Pasig City – to be inexistent. To this, Atty. Gagate was said to have retorted as follows: "*The good counsel for the respondent could send any Answer or processes or pleadings to may (sic) address at Bambang, Nueva Vizcaya Your Honor, they could come over all the way to Nueva Vizcaya, we will entertain him.*"[9]

On June 15, 2010, the COMELEC Second Division issued a Resolution[10] denying the petition for lack of substantial evidence. A copy thereof was sent to Layug *via* registered mail at #70 Dr. Pilapil Street, Barangay San Miguel, Pasig City. However, the mail was returned unserved with the following notation of the postmaster: "1st 6/23/10 unknown; 2nd 6/25/10 unknown; and 3rd attempt 6/28/10 RTS INSUFFICIENT ADDRESS." Subsequently, in its Order[11] dated July 26, 2010, the COMELEC Second Division found Layug to be a "phantom petitioner" by "seeing to it that pleadings, orders and judicial notices addressed to him are not received by him because the address he gave and maintains is fictitious." Accordingly, Layug was deemed to have received on June 23, 2010 a copy of the Resolution dated June 15, 2010 and, there being no motion for reconsideration

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[9] See Order dated July 26, 2010, *id.* at 57.

[10] *Supra* note 1.

[11] *Id.* at 56–58.

filed within the reglementary period, said Resolution was declared final and executory. It was entered[12] in the Book of Entries of Judgment on July 28, 2010.

As a consequence of such entry, the COMELEC *En Banc*, sitting as the National Board of Canvassers for Party-List, promulgated on July 30, 2010 NBC Resolution No. 10-034[13] proclaiming Buhay Party-List as a winner entitled to two (2) seats in the House of Representatives. Being the fifth nominee, however, Brother Mike was not proclaimed as the representative of Buhay Party-List.

Meanwhile, on July 28, 2010, Layug moved for reconsideration of the Resolution dated June 15, 2010 before the COMELEC *En Banc* claiming denial of due process for failure of the COMELEC to serve him, his representatives or counsels a copy of said Resolution. He alleged that it was only on July 26, 2010, after learning about it in the newspapers, that he personally secured a copy of the Resolution from the COMELEC.[14] His motion for reconsideration, however, was denied by the COMELEC Second Division in its Order[15] dated August 4, 2010 for being filed out of time.

The Issues

Aggrieved, Layug filed this petition imputing grave abuse of discretion on the part of the COMELEC for the following acts and omissions:

I. THE COMELEC SECOND DIVISION DID NOT ISSUE A NOTICE OF PROMULGATION TO THE PETITIONER'S COUNSEL AS REQUIRED BY RULE 13 OF THE RULES OF COURT, THEREBY COMMITTING A CLEAR VIOLATION OF PROCEDURAL DUE PROCESS; and

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[12] *Id.* at 55.

[13] *Supra* note 2.

[14] Omnibus Motion (A) Supplement to the Motion for Reconsideration and (B) Manifestation dated August 2, 2010, *id.* at 59–67.

[15] *Id.* at 252–257.

II. BY ISSUING THE 30 JULY 2010 RESOLUTION, THE COMELEC *EN BANC* UNLAWFULLY NEGLECTED THE PERFORMANCE OF AN ACT WHICH THE LAW SPECIFICALLY ENJOINS AS A DUTY RESULTING FROM ITS OFFICE, WHICH IS TO HEAR AND DECIDE THE PETITIONER'S MOTION FOR RECONSIDERATION WHICH WAS TIMELY FILED.[16]

In their respective Comments[17] to the petition, respondents assail the jurisdiction of the Court arguing that, with the proclamation of Buhay Party-List on July 30, 2010 and the assumption into office of its representatives, Mariano Michael DM. Velarde, Jr. and William Irwin C. Tieng, it is now the House of Representatives Electoral Tribunal that has the sole and exclusive jurisdiction over questions relating to their qualifications.

With regard to the issue on denial of due process, respondents maintain that, by providing an incorrect address to which a copy of the Resolution dated June 15, 2010 was duly sent and by refusing to rectify the error in the first instance when it was brought to his attention, Layug cannot now be heard to complain.

We rule for the respondents.

The Ruling of the Court

I. *The Court not the HRET has jurisdiction over the present petition.*

Section 17, Article VI of the 1987 Constitution provides that the House of Representatives Electoral Tribunal (**HRET**) shall be the *sole* judge of all contests relating to the election, returns, and qualifications of its Members. Section 5 (1) of the same Article identifies who the "members" of the House are:

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[16] Petition, *id.* at 7-8.

[17] Comment of Private Respondents, *id.* at 100-131; Comment filed by the Office of the Solicitor General for Public Respondent COMELEC, *id.* at 370-394.

Sec. 5. (1). The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations. (Underscoring added).

Clearly, the members of the House of Representatives are of two kinds: (1) members who shall be elected from legislative districts; and (2) those who shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.[18] In this case, Buhay Party-List was entitled to two seats in the House that went to its first two nominees, Mariano Michael DM. Velarde, Jr. and William Irwin C. Tieng. On the other hand, Brother Mike, being the fifth nominee, did not get a seat and thus had not become a member of the House of Representatives. Indubitably, the **HRET** has no jurisdiction over the issue of Brother Mike's qualifications.

Neither does the **HRET** have jurisdiction over the qualifications of Buhay Party-List, as it is vested by law, specifically, the *Party-List System Act*, upon the COMELEC. Section 6 of said *Act* states that "the COMELEC may *motu proprio* or upon verified complaint of any interested party, remove or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition xxx." Accordingly, in the case of *Abayon vs. HRET*,[19] We ruled that the **HRET** did not gravely abuse its discretion when it dismissed the petitions for *quo warranto* against *Aangat Tayo* party-list and *Bantay* party-list insofar as they sought the disqualifications of said party-lists.

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[18] *Abayon v. House of Representative Electoral Tribunal*, G.R. Nos. 189466 and 189506, February 11, 2010, 612 SCRA 375, 381.

[19] *Id.* at 385.

Thus, it is the Court, under its power to review decisions, orders, or resolutions of the COMELEC provided under Section 7, Article IX-A of the 1987 Constitution[20] and Section 1, Rule 37 of the COMELEC Rules of Procedure[21] that has jurisdiction to hear the instant petition.

II. Layug was not denied due process.

A party may sue or defend an action *pro se*.[22] Under Section 3, Rule 7 of the Rules of Court, "(e)very pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box."

A judicious perusal of the records shows that Layug filed *pro se* both the Petition to Disqualify[23] and his Position Paper[24] before the COMELEC Second Division. In the Petition to Disqualify, he stated his address as **#70 Dr. Pilapil Street, Barangay San Miguel, Pasig City**. While Atty. Rustico B. Gagate appeared as counsel for Layug during the hearing conducted on April 20, 2010, he nonetheless failed to provide either his or his client's complete and correct address despite the manifestation that counsel for private respondents could not personally serve the Answer on Layug due to the inexistence of the given address. Neither did the Position Paper that was subsequently filed *pro se* on April 23, 2010 indicate any forwarding address.

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[20] Sec.7. xxx Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

[21] Sec.1 – *Petition for Certiorari; and Time to File*. – Unless otherwise provided by law, or by any specific provisions in these Rules, any decision, order or ruling of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from its promulgation.

[22] *Estoya v. Abraham-Singson*, Adm. Matter No. RTJ-91-758, September 26, 1994, 237 SCRA 1, 19.

[23] *Supra* note 4.

[24] *Id*. at 49-54.

It should be stressed that a copy of the Resolution dated June 15, 2010 was mailed to Layug at his stated address at **#70 Dr. Pilapil Street, Barangay San Miguel, Pasig City**, which however was returned to sender (COMELEC) after three attempts due to insufficiency of said address, as evidenced by certified true copies of the registry return receipt[25], as well as the envelope[26] containing the Resolution; the Letter[27] of Pasig City Central Post Office Postmaster VI Erlina M. Pecante; the Certification[28] dated November 2, 2010 of the Postmaster of Pasig City Post Office; and the Affidavit of Service[29] of COMELEC Bailiff Arturo F. Forel dated August 13, 2010. Consequently, the COMELEC deemed Layug to have received a copy of the Resolution on June 23, 2010, the date the postmaster made his first attempt to serve it. There being no motion for reconsideration filed, the COMELEC issued an Order[30] on July 26, 2010 declaring the Resolution final and executory, which thereafter became the basis for the issuance of the assailed COMELEC *En Banc*'s NBC Resolution[31] No. 10-034 dated July 30, 2010.

From the fact alone that the address which Layug furnished the COMELEC was incorrect, his pretensions regarding the validity of the proceedings and promulgation of the Resolution dated June 15, 2010 for being in violation of his constitutional right to due process are doomed to fail.[32] His refusal to rectify the error despite knowledge thereof impels Us to conclude that he deliberately stated an inexistent address with the end in view of delaying the proceedings upon the plea of lack of due process.

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[25] *Id.* at 398.

[26] *Id.*

[27] *Id.* at 402.

[28] *Id.* at 259.

[29] *Id.* at 399.

[30] *Supra* note 11.

[31] *Supra* note 2.

[32] See *Estrada v. People of the Philippines*, G.R. No. 162371, August 25, 2005, 468 SCRA 233, 244-245.

As the COMELEC aptly pointed out, Layug contemptuously made a mockery of election laws and procedure by appearing before the Commission by himself or by different counsels when he wants to, and giving a fictitious address to ensure that he does not receive mails addressed to him.[33] He cannot thus be allowed to profit from his own wrongdoing. To rule otherwise, considering the circumstances in the instant case, would place the date of receipt of pleadings, judgments and processes within Layug's power to determine at his pleasure. This, We cannot countenance.

It bears stressing that the finality of a decision or resolution is a jurisdictional event which cannot be made to depend on the convenience of a party.[34] Decisions or resolutions must attain finality at some point and its attainment of finality should not be made dependent on the will of a party.

In sum, the Court finds no grave abuse of discretion amounting to lack or excess of jurisdiction attributable to the COMELEC in issuing NBC Resolution No. 10-034 dated July 30, 2010 proclaiming Buhay Party-List as a winner in the May 10, 2010 elections on the basis of the final and executory Resolution dated June 15, 2010 denying the petition to disqualify private respondents.

III. *Mandamus* does not lie to compel the COMELEC *En Banc* to rule on Layug's Motion for Reconsideration.

Mandamus, as a remedy, is available to compel the doing of an act specifically enjoined by law as a duty. It cannot compel the doing of an act involving the exercise of discretion one way or the other.[35] Section 3, Rule 65 of the Rules of Court clearly provides:

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[33] Order dated July 26, 2010, *rollo*, p. 58.

[34] *Aguilar, et al. v. Court of Appeals, et al.*, G.R. No. 120972, July 19, 1999, 310 SCRA 393, 402. See also *NIAConsult, Inc. v. National Labor Relations Commission*, G.R. No. 108278, January 2, 1997, 266 SCRA 17, 22-23.

[35] *Mateo v. Court of Appeals*, G.R. No. 83354, April 25, 1991, 196 SCRA 280, 284.

SEC. 3. *Petition for mandamus* — When any tribunal, corporation, board, officer or person **unlawfully neglects the performance of an act which the law specifically enjoins as a duty** resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (Emphasis supplied)

In this case, the COMELEC *En Banc* cannot be compelled to resolve Layug's Motion for Reconsideration[36] of the Resolution dated June 15, 2010 that was filed on July 28, 2010 after said Resolution had already attained finality. In fact, the COMELEC Second Division denied the same Motion in its Order[37] dated August 4, 2010 precisely for the reason that it was filed out of time.

It should likewise be pointed out that the aforesaid Motion for Reconsideration was filed without the requisite notice of hearing. We have held time and again that the failure to comply with the mandatory requirements under Sections 4[38] and 5[39] of

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[36] *Rollo*, pp. 19-30.

[37] *Supra* note 15.

[38] SECTION 4. *Hearing of motion*. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[39] SECTION 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

Rule 15 of the Rules of Court renders the motion defective. As a rule, a motion without a notice of hearing is considered *pro forma*.[40] None of the acceptable exceptions obtain in this case.

Moreover, the Motion was filed by a new counsel – Evasco, Abinales and Evasco Law Offices – without a valid substitution or withdrawal of the former counsel. Thus said the COMELEC:

> 5. In spite of the finding that petitioner's given address '#70 Dr. Pilapil St., Barangay San Miguel, Pasig City' cannot be found, a new counsel, 'Evasco Abinales and Evasco Law Offices' filed on July 20, 2010, an 'ENTRY OF APPEARANCE AS COUNSEL (for petitioner Layug) WITH MANIFESTATION', at the bottom of which appear the name and signature of petitioner Roland D. Layug expressing his conforme, with his given (*sic*) at the same '#70 Dr. Pilapil St., Barangay San Miguel, Pasig City;' it is noted that the entry of appearance of a new counsel is without the benefit of the withdrawal of the former counsel.[41]

Considering, therefore, Layug's utter disregard of the rules of procedure for which he deserves no empathy, the Court finds that the COMELEC exercised its discretion within the bounds of the law thus warranting the dismissal of the instant case.

WHEREFORE, the instant Petition for *Certiorari* is hereby **DISMISSED**.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, and *Reyes, JJ.,* concur.

del Castillo, J., on official leave.

Sereno, J., on leave.

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[40] *Preysler, Jr. v. Manila Southcoast Development Corporation,* G.R. No. 171872, June 28, 2010, 621 SCRA 636, 643.

[41] Order dated July 26, 2010, *rollo,* pp. 57-58.

EN BANC

[G.R. No. 193978. February 28, 2012]

JELBERT B. GALICTO, *petitioner, vs.* **H.E. PRESIDENT BENIGNO SIMEON C. AQUINO III, in his capacity as President of the Republic of the Philippines; ATTY. PAQUITO N. OCHOA, JR., in his capacity as Executive Secretary; and FLORENCIO B. ABAD, in his capacity as Secretary of the Department of Budget and Management,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* AND PROHIBITION; INCORRECT REMEDY TO ASSAIL THE VALIDITY OF AN EXECUTIVE ORDER; PETITION FOR DECLARATORY RELIEF, PROPER RECOURSE.— Under the Rules of Court, petitions for *Certiorari* and Prohibition are availed of to question judicial, quasi-judicial and mandatory acts. Since the issuance of an EO is not judicial, quasi-judicial or a mandatory act, a petition for *certiorari* and prohibition is an incorrect remedy; instead a petition for declaratory relief under Rule 63 of the Rules of Court, filed with the Regional Trial Court (*RTC*), is the proper recourse to assail the validity of EO 7: Section 1. *Who may file petition*. Any person interested under a deed, will, contract or other written instrument, **whose rights are affected by** a statute, **executive order** or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

2. ID.; RULES OF PROCEDURE; THE COURT MAY SET ASIDE PROCEDURAL CONSIDERATIONS TO PERMIT PARTIES TO BRING A SUIT BEFORE IT AT THE FIRST INSTANCE THROUGH *CERTIORARI* AND/OR PROHIBITION; LIMITATIONS.— While we have recognized in the past that we can exercise the discretion and rulemaking authority we are granted under the Constitution, and set aside procedural

considerations to permit parties to bring a suit before us at the first instance through *certiorari* and/or prohibition, this liberal policy remains to be an exception to the general rule, and thus, has its limits. In *Concepcion v. Commission on Elections* (*COMELEC*), we emphasized the importance of availing of the proper remedies and cautioned against the wrongful use of *certiorari* in order to assail the quasi-legislative acts of the COMELEC, especially by the wrong party. In ruling that liberality and the transcendental doctrine cannot trump blatant disregard of procedural rules, and considering that the petitioner had other available remedies (such as a petition for declaratory relief with the appropriate RTC under the terms of Rule 63 of the Rules of Court), as in this case, we categorically ruled: The petitioner's unusual approaches and use of Rule 65 of the Rules of Court do not appear to us to be the result of any error in reading Rule 65, given the way the petition was crafted. Rather, it was a backdoor approach to achieve what the petitioner could not directly do in his individual capacity under Rule 65. It was, at the very least, an attempted bypass of other available, albeit lengthier, modes of review that the Rules of Court provide. While we stop short of concluding that the petitioner's approaches constitute an abuse of process through a manipulative reading and application of the Rules of Court, **we nevertheless resolve that the petition should be dismissed for its blatant violation of the Rules. The transgressions alleged in a petition, however weighty they may sound, cannot be justifications for blatantly disregarding the rules of procedure, particularly when remedial measures were available under these same rules to achieve the petitioner's objectives. For our part, we cannot and should not – in the name of liberality and the "transcendental importance" doctrine – entertain these types of petitions.** As we held in the very recent case of *Lozano, et al. vs. Nograles*, albeit from a different perspective, our liberal approach has its limits and should not be abused.

3. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; *LOCUS STANDI*; DEFINED; CONSTITUTIONAL QUESTIONS WHEN MAY BE RAISED BY A PARTY.— "*Locus standi* or legal standing has been defined as a **personal and substantial interest** in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.

The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." This requirement of standing relates to the constitutional mandate that this Court settle only actual cases or controversies. Thus, as a general rule, a party is allowed to "raise a constitutional question" when (1) he can show that he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.

4. ID.; ID.; ID.; ID.; ID.; TERM "INTEREST" DEFINED AND EXPLAINED; THE ABSENCE OF VESTED RIGHTS TO SALARY INCREASES DEPRIVES THE PETITIONER OF LEGAL STANDING TO ASSAIL EXECUTIVE ORDER (EO) 7; THE CURTAILMENT OF FUTURE INCREASES IN THE SALARIES AND OTHER BENEFITS CANNOT BE CHARACTERIZED AS CONTINGENT EVENTS OR EXPECTANCIES.— Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a **present substantial interest**, as distinguished from a **mere expectancy** or a **future, contingent, subordinate, or consequential interest**." x x x In the present case, we are not convinced that the petitioner has demonstrated that he has a personal stake or material interest in the outcome of the case because his interest, if any, is speculative and based on a mere expectancy. In this case, the curtailment of future increases in his salaries and other benefits cannot but be characterized as contingent events or expectancies. To be sure, he has no vested rights to salary increases and, therefore, the absence of such right deprives the petitioner of legal standing to assail EO 7.

5. ID.; ID.; ID.; ID.; RATIONALE FOR THE *LOCUS STANDI* REQUIREMENT; ELEMENT OF INJURY; THE INJURY MUST BE DIRECT AND SUBSTANTIAL; IF THE ASSERTED INJURY IS MORE IMAGINED THAN REAL, OR IS MERELY SUPERFICIAL AND INSUBSTANTIAL,

THE COURTS MAY END UP BEING IMPORTUNED TO DECIDE A MATTER THAT DOES NOT REALLY JUSTIFY SUCH AN EXCURSION INTO CONSTITUTIONAL ADJUDICATION.— It has been held that as to the element of injury, such aspect is not something that just anybody with some grievance or pain may assert. It has to be **direct and substantial** to make it worth the court's time, as well as the effort of inquiry into the constitutionality of the acts of another department of government. If the asserted injury is more imagined than real, or **is merely superficial and insubstantial,** then the courts may end up being importuned to decide a matter that does not really justify such an excursion into constitutional adjudication. The rationale for this constitutional requirement of *locus standi* is by no means trifle. Not only does it assure the vigorous adversary presentation of the case; more importantly, it must suffice to warrant the Judiciary's overruling the determination of a coordinate, democratically elected organ of government, such as the President, and the clear approval by Congress, in this case. Indeed, the rationale goes to the very essence of representative democracies.

6. ID.; ID.; ID.; ID.; MERE INVOCATION BY A MEMBER OF THE BAR IN GOOD STANDING OF HIS DUTY TO ENSURE THAT LAWS AND ORDERS OF THE PHILIPPINE GOVERNMENT ARE LEGALLY AND VALIDLY ISSUED IS NOT SUFFICIENT TO CLOTHE HIM WITH STANDING TO QUESTION THE VALIDITY OF EXECUTIVE ORDER (EO) NO. 7.— Neither can the lack of *locus standi* be cured by the petitioner's claim that he is instituting the present petition as a member of the bar in good standing who has an interest in ensuring that laws and orders of the Philippine government are legally and validly issued. This supposed interest has been branded by the Court in *Integrated Bar of the Phils. (IBP) v. Hon. Zamora*, "as too general an interest which is shared by other groups and [by] the whole citizenry." Thus, the Court ruled in *IBP* that the mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in that case. The Court made a similar ruling in *Prof. David v. Pres. Macapagal-Arroyo* and held that the petitioners therein, who are national officers of the IBP, have no legal standing, having failed to allege any direct

or potential injury which the IBP, as an institution, or its members may suffer as a consequence of the issuance of Presidential Proclamation No. 1017 and General Order No. 5.

7. ID.; ID.; ID.; ID.; WHILE THE COURT HAS TAKEN AN INCREASINGLY LIBERAL APPROACH TO THE RULE OF *LOCUS STANDI*, EVOLVING FROM THE STRINGENT REQUIREMENTS OF "PERSONAL INJURY" TO THE BROADER "TRANSCENDENTAL IMPORTANCE" DOCTRINE, SUCH LIBERALITY IS NOT TO BE ABUSED.— We note that while the petition raises vital constitutional and statutory questions concerning the power of the President to fix the compensation packages of GOCCs and GFIs with possible implications on their officials and employees, the same cannot "infuse" or give the petitioner *locus standi* under the transcendental importance or paramount public interest doctrine. In *Velarde v. Social Justice Society*, we held that even if the Court could have exempted the case from the stringent *locus standi* requirement, such heroic effort would be futile because the transcendental issue could not be resolved any way, **due to procedural infirmities and shortcomings**, as in the present case. In other words, giving due course to the present petition which is saddled with formal and procedural infirmities explained above in this Resolution, cannot but be an exercise in futility that does not merit the Court's liberality. As we emphasized in *Lozano v. Nograles*, **"while the Court has taken an increasingly liberal approach to the rule of *locus standi*, evolving from the stringent requirements of 'personal injury' to the broader 'transcendental importance' doctrine, such liberality is not to be abused."**

8. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; A PARTY WHO IS NOT A LAWYER IS NOT PRECLUDED FROM SIGNING HIS OWN PLEADINGS.— We do not see any violation of Section 3, Rule 7 of the Rules of Civil Procedure as the petition bears the petitioner's signature and office address. The present suit was brought before this Court ***by the petitioner himself as a party litigant*** and not through counsel. Therefore, the requirements under the Supreme Court *En Banc* Resolution dated November 12, 2001 and Bar Matter No. 1922 do not apply. In Bar Matter No. 1132,

April 1, 2003, we clarified that a party who is not a lawyer is not precluded from signing his own pleadings as this is allowed by the Rules of Court; the purpose of requiring a counsel to indicate his IBP Number and PTR Number is merely to protect the public from bogus lawyers. A similar construction should be given to Bar Matter No. 1922, which requires lawyers to indicate their MCLE Certificate of Compliance or Certificate of Exemption; otherwise, the provision that allows parties to sign their own pleadings will be negated.

9. ID.; ID.; ID.; A DEFECTIVE JURAT IN THE VERIFICATION/ CERTIFICATION OF NON-FORUM SHOPPING IS NOT A FATAL DEFECT.— [T]he point raised by the respondents regarding the petitioner's defective *jurat* is correct. Indeed, A.M. No. 02-8-13-SC, dated February 19, 2008, calls for a current identification document issued by an official agency bearing the photograph and signature of the individual as competent evidence of identity. Nevertheless, we hasten to clarify that the defective *jurat* in the Verification/Certification of Non-Forum Shopping is not a fatal defect, as we held in *In-N-Out Burger, Inc. v. Sehwani, Incorporated.* The verification is only a formal, not a jurisdictional, requirement that the Court may waive.

10. ID.; ID.; ACTIONS; WHEN CONSIDERED MOOT; ISSUE ON THE CONSTITUTIONALITY OF EXECUTIVE ORDER NO. 7 IS MOOT ON ITS FACE IN LIGHT OF THE ENACTMENT OF GOCC GOVERNANCE ACT OF 2011 (R.A. NO. 10149) AUTHORIZING THE PRESIDENT TO FIX THE COMPENSATION FRAMEWORK OF GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS (GOCCs) AND GOVERNMENT FINANCIAL INSTITUTIONS (GFIs).— With the enactment of the GOCC Governance Act of 2011, the President is now authorized to fix the compensation framework of GOCCs and GFIs. x x x. [T]he new law amended R.A. No. 7875 and other laws that enabled certain GOCCs and GFIs to fix their own compensation frameworks; the law now authorizes the President to fix the compensation and position classification system for all GOCCs and GFIs, as well as other entities covered by the law. This means that, the President can now reissue an EO containing these same provisions without any legal constraints.

A moot case is "one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value." "[A]n action is considered 'moot' when it no longer presents a justiciable controversy because the issues involved have become academic or dead[,] or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties x x x. Simply stated, there is nothing for the x x x court to resolve as [its] determination x x x has been overtaken by subsequent events." This is the present situation here. Congress, thru R.A. No. 10149, has expressly empowered the President to establish the compensation systems of GOCCs and GFIs. For the Court to still rule upon the supposed unconstitutionality of EO 7 will merely be an academic exercise. Any further discussion of the constitutionality of EO 7 serves no useful purpose since such issue **is moot in its face** in light of the enactment of R.A. No. 10149. In the words of the eminent constitutional law expert, Fr. Joaquin Bernas, S.J., "the Court normally [will not] entertain a petition touching on an issue that has become moot because x x x there would [be] no longer x x x a 'flesh and blood' case for the Court to resolve."

CORONA*, C.J., separate opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; WHERE THE PRESIDENT, AS CHIEF EXECUTIVE, MAKES A DECISIVE MOVE TO STAVE OFF THE FINANCIAL HEMORRHAGE AND ADMINISTRATIVE INEFFICIENCY OF GOVERNMENT CORPORATIONS, THE SUPREME COURT SHOULD NOT INVALIDATE THE CHIEF EXECUTIVE'S ACTION WITHOUT A CLEAR SHOWING OF GRAVE ABUSE OF DISCRETION ON HIS PART.— Accountability in public office requires rationality and efficiency in both administrative and financial operations of all government offices, government-owned and controlled corporations (GOCCs) included. As a corollary, public funds must be utilized in a way that will promote transparency, accountability and prudence. The nation was recently informed that GOCCs, most of which enjoyed privileges not afforded to other offices and agencies of the National Government, suffer from serious fiscal deficit. Yet, officers and employees of these GOCCs continue

to receive hefty perks and excessive allowances presenting a stark disconnect and causing the further depletion of limited resources. In the face of such situation, where the President as Chief Executive makes a decisive move to stave off the financial hemorrhage and administrative inefficiency of government corporations, the Court should not invalidate the Chief Executive's action without a clear showing of grave abuse of discretion on his part.

2. ID.; ID.; ID.; THE SUPREME COURT IS REQUIRED TO EXERCISE RESTRAINT IN NULLIFYING THE ACT OF A CO-EQUAL AND COORDINATE BRANCH.— Fundamental considerations governing the exercise of the power of judicial review require the Court to exercise restraint in nullifying the act of a co-equal and coordinate branch. Here, the justiciability doctrines of standing and mootness work against petitioner. Moreover, a careful consideration of the respective arguments of the parties compels sustaining the validity of EO 7. The President as Chief Executive has the legal authority to issue EO 7. Furthermore, petitioner failed to show that the President committed grave abuse of discretion in directing the rationalization of the compensation and position classification system in GOCCs and GFIs.

3. ID.; ID.; ID.; JUSTICIABILITY DOCTRINES; STANDING AND MOOTNESS; MUST BE COMPLIED WITH AS A PREREQUISITE FOR THE COURT'S EXERCISE OF ITS AWESOME POWER TO DECLARE THE ACT OF A CO-EQUAL BRANCH INVALID FOR BEING UNCONSTITUTIONAL.— The power of judicial review is a sword that must be unsheathed with restraint. To ensure this, certain justiciability doctrines must be complied with as a prerequisite for the Court's exercise of its awesome power to declare the act of a co-equal branch invalid for being unconstitutional. These doctrines are important as they are intertwined with the principle of separation of powers. They help define the judicial role; they determine when it is appropriate for courts to review (a legal issue) and when it is necessary to defer to the other branches of government. Among the justiciability doctrines are standing and mootness. Petitioner failed to observe both.

4. ID.; ID.; ID.; ID.; *LOCUS STANDI*; A PARTY WHO ASSAILS THE CONSTITUTIONALITY OF A STATUTE OR OFFICIAL ACT MUST SHOW NOT ONLY THAT THE LAW OR ANY GOVERNMENTAL ACT IS INVALID, BUT ALSO THAT HE SUSTAINED OR IS IN IMMEDIATE DANGER OF SUSTAINING SOME DIRECT INJURY AS A RESULT OF ITS ENFORCEMENT AND NOT MERELY THAT HE SUFFERS THEREBY IN SOME INDEFINITE WAY.— Courts do not decide all kinds of cases dumped on their laps and do not open their doors to all parties or entities claiming a grievance. *Locus standi* is intended to assure a vigorous adversary presentation of the case. More importantly, it warrants the judiciary's overruling the determination of a coordinate, democratically elected organ of government. It thus goes to the very essence of representative democracies. x x x Petitioner cannot sufficiently anchor his standing to bring this action on account of his employment in PhilHealth, a GOCC covered by EO 7. He cannot reasonably expect this Court to symphatize with his lament that the law impedes or threatens to impede his right to receive future increases as well as the right of members of the board of directors of Philhealth to allowances and bonuses. The irreducible minimum condition for the exercise of judicial power is a requirement that a party "show he personally has suffered some actual or threatened injury" to his rights. A party who assails the constitutionality of a statute or an official act must have a direct and personal interest. He must show not only that the law or any governmental act is invalid, but also that **he sustained or is in immediate danger of sustaining some direct injury** as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. **He must show that he has been or is about to be denied some right or privilege to which he is lawfully entitled** or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. For this reason, petitioner's reliance on his status as PhilHealth employee, without more, is a frail thread that fails to sustain the burden of *locus standi* required of anyone who may properly invoke the Court's power of judicial review.

5. ID.; ID.; ID.; ID.; ID.; ID.; PETITIONER LACKS STANDING TO ASSAIL THE VALIDITY OF EXECUTIVE ORDER (EO) 7 WHICH MERELY IMPOSES A MORATORIUM,

NOT AN ABSOLUTE BAN, ON SALARY INCREASES; PUBLIC OFFICER HAS A VESTED RIGHT ONLY TO SALARIES EARNED OR ACCRUED, BUT NOT TO SALARY INCREASES.— EO 7 simply imposes a moratorium on increases in salaries, allowances and other benefits of officials and employees of GOCCs and GFIs and directs the suspension of all allowances bonuses and incentives of GOCC and GFI officials. *Moratorium* is defined as an authorized postponement in the performance of an obligation or a suspension of a specific activity. Section 9 of EO 7 is not a permanent prohibition on petitioner's perceived right to receive future increases. Nor is it an absolute ban on salary increases as it ensures that, like all other officials and employees of the government, officials and employees of GOCCs and GFIs will continue to enjoy the salary increases mandated under EO 8011 dated June 17, 2009 and EO 900 dated June 23, 2010. While one's employment is a constitutionally-protected property right, petitioner does not claim that his employment is at risk under EO 7. Petitioner is simply concerned about his entitlement to future salary increases. However, a public officer has a vested right only to salaries already earned or accrued. Salary increases are a mere expectancy. They are by nature volatile and dependent on numerous variables, including the company's fiscal situation, the employee's future performance on the job, or the employee's continued stay in a position. Thus, petitioner does not have a "right" to an increase in salary. There is no vested right to salary increases. There must be a lawful decree or order supporting an employee's claim. In this case, petitioner failed to point to any lawful decree or order supporting his entitlement to future increases in salary, as no such decree or order yet exists.

6. ID.; ID.; ID.; ID.; ID.; INJURY OR THREAT OF INJURY, AS AN ELEMENT OF LEGAL STANDING, REFERS TO A DENIAL OF A RIGHT OR PRIVILEGE; DENIAL OF REASONABLE EXPECTATION, NOT INCLUDED.— It is, however, contended that petitioner does not claim any right to any future increase. He merely seeks to remove any legal impediment to his receiving future increases. It is asserted that, without the legal impediment provided under Section 9 of EO 7, any future increase in petitioner's compensation will simply depend on the usual factors considered by the proper

authorities. x x x [T]his view is misleading and incorrect. It is misleading because, by re-working the concept of injury, it diverts the focus from the required right-centric approach to the concept of injury as an element of *locus standi*. Injury or threat of injury, as an element of legal standing, refers to a denial of a right or privilege. It does not include the denial of a reasonable expectation. The argument is likewise incorrect because petitioner's reasonable expectation of any future salary increase is subject to presidential approval. Even without Section 9 of EO 7, the President may disallow any salary increase in RA 6758 – exempt entities. Section 9 of Joint Resolution No. 4, Section 59 of the General Provisions of RA 9970 and Section 56 of the General Provisions of RA 10147 expressly confer on the President the authority to approve or disapprove "any grant of or increase in salaries, allowances, and other fringe benefits" in entities exempt from the coverage of RA 6758. The approval of the President, upon the favorable recommendation of the Department of Budget and Management (DBM), is among the "usual factors" that will determine any future salary increase that may be reasonable expected to be received by petitioner.

7. ID.; ID.; ID.; ID.; ID.; MERE INTEREST AS A MEMBER OF THE BAR AND AN EMPTY INVOCATION OF A DUTY IN MAKING SURE THAT LAWS AND ORDERS BY OFFICIALS OF THE PHILIPPINE GOVERNMENT ARE LEGALLY ISSUED AND IMPLEMENTED, DOES NOT SUFFICE TO CLOTHE ONE WITH STANDING.— Neither can petitioner rely on his membership in the Philippine Bar to support his legal standing. Mere interest as a member of the Bar and an empty invocation of a duty in "making sure that laws and orders by officials of the Philippine government are legally issued and implemented" does not suffice to clothe one with standing. It is clear from the foregoing that petitioner failed to satisfy the irreducible minimum condition that will trigger the exercise of judicial power. Lacking a leg on which he may base his personality to bring this action, petitioner's claim of sufficient standing should fail.

8. ID.; ID.; ID.; ID.; MOOT; IF A CASE IS MOOT, THERE IS NO LONGER AN ACTUAL CONTROVERSY BETWEEN ADVERSE LITIGANTS; THE ENACTMENT OF GOCC

GOVERNANCE ACT OF 2011 (RA 10149) HAS RENDERED THE ISSUE AS TO THE VALIDITY OF EXECUTIVE ORDER 7 EFFECTIVELY MOOT.— Even assuming that petitioner had standing at the time he commenced this petition, subsequent events have rendered his petition moot. For one, the effectivity of the suspension of allowances and bonuses enjoyed by the board of directors/ trustees of GOCCs and GFIs under Section 10 of EO 7 already lapsed on December 31, 2010. Thus, a review of the constitutionality of that provision is no longer necessary and its invalidation improper. The unnecessary invalidation of Section 10 of EO 7 might not only betray injudiciousness on the part of the Court but also needlessly put the Chief Executive, the head of a co-equal branch, in a bad light for issuing an invalid provision. Thus, the undue disregard of the mootness doctrine in connection with Section 10 of EO 7 would inflict severe collateral damage to judicial modesty and inter-branch courtesy. Moreover, x x x the enactment of RA 10149 has rendered the issue as to the validity of EO 7 effectively moot. With RA 10149, Congress affirmed the power of the President as enunciated in EO 7 to set guidelines and components of a rationalized compensation and position classification for all GOCC and GFI employees. If a case is moot, there is no longer an actual controversy between adverse litigants. Also, if events subsequent to the initiation of the lawsuit have resolved the matter, then the decision of the court on that issue is not likely to have any meaningful effect. With the recognition that RA 10149 mooted the challenge to EO 7, the Court must act with circumspection and prudence, bearing in mind that due respect for a co-equal branch necessitates that the presumption of legality and constitutionality afforded to the said provisions should no longer be disturbed.

9. STATUTORY CONSTRUCTION; STATUTES; PROVISIONS OF LAW SHOULD BE READ AND UNDERSTOOD IN THEIR ENTIRETY AND ALL PARTS THEREOF SHOULD BE SEEN AS CONSTITUTING A COHERENT WHOLE; EXECUTIVE ORDER NO. 7 IS CONSISTENT WITH LAWS, INCLUDING REPUBLIC ACT 7875 (NATIONAL HEALTH INSURANCE ACT OF 1995) AND JOINT RESOLUTION NO. 4; SECTION 9 OF JOINT RESOLUTION NO. 4, CONSTRUED.— EO 7 is consistent with laws, including

RA 7875 and Joint Resolution No. 4. True, Congress carved exceptions to RA 6758, as amended, when it created GOCCs and GFIs which have been granted the authority to determine their own compensation and position classification system. Philhealth, governed by RA 7875, is one of these RA 6758-exempt entities. It is likewise true that Section 9 of Joint Resolution No. 4 recognizes the authority granted to exempt entities like Philhealth to determine their own compensation and position classification system. Nonetheless, the said provision also provides that exempt entities "**shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives prescribed by the President**." x x x. Provisions of law should be read and understood in their entirety and all parts thereof should be seen as constituting a coherent whole. In this context, the recognition under Section 9 of Joint Resolution No. 4 of the authority granted to exempt entities like Philhealth to determine their own compensation and position classification system seeks to exclude them from the salary adjustments provided in Joint Resolution No. 4. This would have the effect of retaining the existing compensation levels in the said exempt entities at that time. It would prevent both diminution, in case their existing compensation levels are higher than the salary adjustments, and also increase, which would have enlarged the pay disparity between those covered by RA 6758 and exempt entities. To ensure observance of the distinction between RA 6758-covered and RA 6758-exempt entities and, at the same time, forestall any unnecessary or excessive dissimilarity in compensation and position classification systems may occur as a result of the distinctions, exempt entities are required to observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives prescribed by the President. This is a recognition by Congress of the authority of the President to issue policies, parameters and guidelines that will govern the determination by exempt entities of their respective compensation and position classification systems. As a further safeguard against any abuse or misuse of their exclusion from RA 6758, any increase in existing salary rates of exempt entities are mandated to have the imprimatur of the President, upon the recommendation of the DBM. This second proviso

complements and enhances the first proviso. It gives the President the opportunity to ascertain whether salary increases in exempt entities are in accordance with the prescribed policies, parameters and guidelines on compensation and position classification system. As a final proviso, exempt entities which still follow the salary rates for positions covered by RA 6758 are entitled to the salary adjustments under Joint Resolution No. 4, until such time as they have implemented their own compensation and position classification system. Again, this acknowledges the status of exempt entities and prevents the effective diminution of their salary rates.

10. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; HAS THE POWER TO PRESCRIBE SUCH POLICIES, PARAMETERS AND GUIDELINES WHICH IN HIS DISCRETION WOULD BEST SERVE PUBLIC INTEREST BY REGULATING THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM OF RA 6758-EXEMPT ENTITIES.— Taken as a cohesive whole, Section 9 of Joint Resolution No. 4 pertains to the **effect on and applicability to RA 6758-exempt entities of the salary adjustments** provided under the said Joint Resolution. It prohibits RA 6758-exempt entities from availing of the beneficial effects of the salary adjustments provided therein, unless such entities still follow the salary rates for positions covered by RA 6758 and only "until such time that they have implemented their own compensation and position classification system." However, **there is nothing there which limits or constricts the power of the President as Chief Executive to prescribe such policies, parameters and guidelines which in his discretion would best serve public interest by regulating the compensation and position classification system of RA 6758-exempt entities**. There is nothing there that prevents or prohibits him from adopting the same or similar policies, parameters and guidelines provided for in the said Joint Resolution. Viewed in this light, Sections 2 to 6 of EO 7 cohere with the objectives of Joint Resolution No. 4 and other laws relevant to it.

11. ID.; STATUTES; A JOINT RESOLUTION, UPON APPROVAL BY THE PRESIDENT IS LAW; JOINT RESOLUTION NO. 4 IS A LAW.— Under the Rules of both the Senate and

the House of Representatives, a joint resolution, like a bill, is required to be enrolled, examined, undergo three readings and signed by the presiding officer of each House. A joint resolution, like a bill, is also presented to the President for approval. There is no real difference between a bill and a joint resolution. A joint resolution also satisfies the two requisites before a bill becomes law – approval by both Houses of Congress after three readings and approval by the President. Thus, a joint resolution, upon approval by the President, is law. x x x Joint Resolution No. 4 was approved by both Houses of Congress after three readings. President Gloria Macapagal-Arroyo approved it on June 17, 2009. It was published in the Manila Times on June 20, 2009 and in Volume 105, No. 34 of the Official Gazette on August 24, 2009. It is therefore a law. As law, Joint Resolution No. 4 may therefore amend or repeal RA 7875, if the second proviso of Section 9 indeed it modifies RA 7875. However, the said proviso may be read in a way that does not require it to be seen as an implied amendment of RA 7875. It can be simply read as a necessary adjunct of the authority to prescribe policies, parameters and guidelines on compensation and position classification system for exempt entities. Without it, the President would have no way to check if the prescribed policies, parameters and guidelines are actually observed.

12. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; SOUND MANAGEMENT AND EFFECTIVE UTILIZATION OF FINANCIAL RESOURCES OF THE GOVERNMENT ARE BASICALLY EXECUTIVE FUNCTIONS; EXECUTIVE ORDER NO. 7 IS AN EXERCISE BY THE PRESIDENT OF HIS POWER OF CONTROL OF ALL THE EXECUTIVE DEPARTMENTS AND BUREAUS INCLUDING GOCCs AND GFIs.— Section 59 of the General Provisions of RA 9970 and Section 56 of the General Provisions of RA 10147 completely debunk the conclusion that Sections 2 to 6 violate existing laws. Specifically with respect to all RA 6758 -exempt GOCCs and GFIs, they recognize the authority of the President as exercised in Sections 2 to 6 of EO 7 to prescribe policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits, and incentives. Specifically with respect to all

RA 6758-exempt GOCCs and GFIs, they acknowledge the President's power to approve or disapprove "any grant of or increase in salaries, allowances, and other fringe benefits." Joint Resolution No. 4, Section 59 of the General Provisions of RA 9970 and Section 56 of the General Provisions of RA 10147 reinforce the rule that "sound management and effective utilization of financial resources of government are basically executive functions." As a necessary incident thereof, the President as Chief Executive has the legal competence to exercise his power of control of all the executive departments, bureaus and offices, including GOCCs and GFIs. EO 7 is simply an exercise by the President of that power of control.

13. ID.; ID.; ID.; THE POWER TO ENFORCE AND ADMINISTER THE LAWS IS VESTED IN THE PRESIDENT; IN ISSUING EXECUTIVE ORDER NO. 7, THE PRESIDENT DOES NOT ENCROACH ON THE AUTHORITY OF THE LEGISLATURE TO MAKE LAWS, BUT IS MERELY ENFORCING THE LAW.— [T]he guidelines in Sections 2 to 6 of EO 7 are within the bounds of authority conferred on the President by the Constitution and various laws. Such regulatory powers cover all GOCCs and GFIs, regardless of coverage in or exemption from the salary standardization laws. In issuing EO 7, the President does not encroach on the authority of the legislature to make laws as he is merely enforcing the law: While Congress is vested with the power to enact laws, the President executes the laws. The executive power is vested in the President. It is generally defined as the power to enforce and administer the laws. It is the power of carrying (out) the laws into practical operation and enforcing their due observance.

14. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT; GOVERNMENT-OWNED AND CONTROL CORPORATIONS (GOCCs) AND GOVERNMENT FINANCIAL INSTITUTIONS (GFIs); THE IMPOSITION OF A MORATORIUM ON INCREASES IN SALARIES, ALLOWANCES AND OTHER BENEFITS OF OFFICERS AND EMPLOYEES OF GOCCs AND GFIs, EXCEPT SALARY ADJUSTMENTS UNDER EXECUTIVE ORDER 8011 AND EXECUTIVE ORDER 900, DOES NOT CONSTITUTE A DEPRIVATION OF PROPERTY.— It is fundamental that no person shall be deprived of life, liberty or property without due process of

law. Hence, the premise of a valid due process claim, whether substantive or procedural, is the dispossession of life or liberty or property. Where there is no deprivation of life, liberty or property, no meaningful claim of denial of due process may be made. x x x [T]he imposition of a moratorium on increases in salaries, allowances and other benefits of officers and employees of GOCCs and GFIs, except salary adjustments under EO 8011 dated June 17, 2009 and EO 900 dated June 23, 2010, does not constitute a deprivation of property. In fact, it ensures that, like all other officials and employees of the government, officials and employees of GOCCs and GFIs will continue to enjoy the salary increases granted under EO 8011 dated June 17, 2009 and EO 900 dated June 23, 2010.

15. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; A PUBLIC OFFICER DOES NOT HAVE A VESTED RIGHT TO SALARY AND HIS COMPENSATION MAY BE ALTERED, DECREASED OR DISCONTINUED, IN THE ABSENCE OF A CONSTITUTIONAL PROHIBITION; THE GRANT OF ANY SALARY INCREASE IN THE FUTURE IS A MERE EXPECTANCY, WHICH DOES NOT GIVE RISE TO A VESTED RIGHT.— [T]he right of a public officer to receive compensation can only arise out of the rendition of the public services related to his or her office. The right to compensation arises out of the performance by the public officer of his duties. Thus, a public officer's right to salary is limited only to salaries which he has already earned or accrued for services rendered. Other than that, a public officer does not have a vested right to salary and his compensation may be altered, decreased or discontinued, in the absence of a constitutional prohibition. If no vested right to salary generally pertains to a public officer, there is no cogent reason to support the claim to a right to future salary increase. The grant of any salary increase in the future is something that is merely anticipatory of a prospective benefit, something that is contingent on various factors. That is why it is a mere expectancy, which does not give rise to a vested right. Furthermore, the measure undertaken by the President seeks to impose a moratorium only on increases which are not authorized by existing legislation sanctioning salary adjustments.

16. ID.; ID.; ID.; ID.; GRANT OF BONUS IS A MANAGEMENT PREROGATIVE WHICH CANNOT BE FORCED UPON

THE EMPLOYER WHO MAY NOT BE OBLIGED TO ASSUME THE ONEROUS BURDEN OF GRANTING BONUSES OR OTHER BENEFITS ASIDE FROM THE EMPLOYEE'S BASIC SALARIES, ESPECIALLY IF IT IS INCAPABLE OF DOING SO; SUSPENSION OF THE GRANT OF BONUSES AND THE IMPOSITION OF A MORATORIUM ON SALARY INCREASES UNDER EXECUTIVE ORDER 7 NOT VIOLATIVE OF THE SUBSTANTIVE DUE PROCESS.— On the matter of the suspension of allowances and bonuses (which is already moot as it was expressly made effective until December 31, 2010 only), its context shows that it was meant to arrest the questionable practice by members of the board of directors/ trustees of GOCCs and GFIs granting numerous and excessive allowances, bonuses, incentives and other benefits to themselves. The President's action as Chief executive was simply a decisive response to Senate issued Resolution No. 17, s. 2010 urging him to act on the matter and an exercise of his control and oversight powers. More importantly, there could have been no violation of substantive due process as petitioner, or anybody for that matter, cannot properly claim a right to receive bonuses. A bonus is not a demandable and enforceable obligation. By definition, a "bonus" is a gratuity or act of liberality of the giver which **cannot be demanded as a matter of right by the recipient**. It is something given in addition to what is ordinarily received by or strictly due to the recipient. The grant thereof is basically a management prerogative which cannot be forced upon the employer who may not be obliged to assume the onerous burden of granting bonuses or other benefits aside from the employee's basic salaries or wages, especially so if it is incapable of doing so. Thus, there can be no oppression to speak of even if these privileges (bonuses, allowances and incentives) cease to be given. All the more reason should the President's judgment as Chief Executive be accorded respect if he directs the temporary stoppage of the grant of bonuses when he deems it to be prejudicial to public interest or too onerous because of the government's fiscal condition. It is therefore clear that the suspension of the grant of bonuses and the imposition of a moratorium on salary increases under EO 7 do not deprive petitioner of any property right. As such, any declaration that such suspension or moratorium violates substantive due process cannot be justified.

17. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; THE POWER TO APPROVE OR DISAPPROVE COVERS THE LESSER POWER TO SUSPEND THE GRANT OF ALLOWANCES AND BONUSES OR IMPOSE A MORATORIUM ON SALARY INCREASES; EXECUTIVE ORDER 7 ACCORDED DUE RESPECT AND THE VALIDITY THEREOF, SUSTAINED. — [S]ection 59 of the General Provisions of RA 9970 and Section 56 of the General Provisions of RA 10147 expressly recognize the President's power to approve or disapprove "any grant of or increase in salaries, allowances, and other fringe benefits" in all RA 6758-exempt GOCCs and GFIs, including Philhealth. The power to approve or disapprove covers the lesser power to suspend the grant of allowances and bonuses or impose a moratorium on salary increases. All told, the act of the President as Chief Executive in issuing EO 7 was not oppressive, arbitrary, capricious or whimsical. No grave abuse of discretion may be imputed to the President. Thus, as the President's official act which enjoys the presumption of constitutionality and regularity, EO 7 should be accorded due respect and its validity sustained.

18. ID.; ID.; ID.; ID.; ABSENT GRAVE ABUSE OF DISCRETION, THE COURT SHOULD RECOGNIZE IN THE PRESIDENT, AS CHIEF EXECUTIVE, THE POWER AND DUTY TO PROTECT AND PROMOTE PUBLIC INTEREST THRU THE RATIONALIZATION OF THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN EXECUTIVE DEPARTMENTS, BUREAUS, AND AGENCIES INCLUDING GOCCS AND GFIS.— Accountability of public office is a safeguard of representative democracy. All who serve in government must always be aware that they are exercising a public trust. They must bear in mind that public funds are scarce resources and should therefore be used prudently and judiciously. Hence, where there are findings that government funds are being wasted due to operational inefficiency and lack of fiscal responsibility in the executive departments, bureaus, offices or agencies, the President as Chief Executive should not be deprived of the authority to control, stop, check or at least manage the situation. Absent any showing of grave abuse of discretion on his part, the Court should recognize in the President as Chief Executive the power and duty to protect and promote public interest thru the rationalization of the

compensation and position classification system in executive departments, bureaus, offices and agencies, including GOCCs and GFIs.

APPEARANCES OF COUNSEL

The Solicitor General for respondents.

R E S O L U T I O N

BRION, *J.*:

Before us is a Petition for *Certiorari* and Prohibition with Application for Writ of Preliminary Injunction and/or Temporary Restraining Order,[1] seeking to nullify and enjoin the implementation of Executive Order No. (*EO*) 7 issued by the Office of the President on September 8, 2010. Petitioner Jelbert B. Galicto asserts that EO 7 is unconstitutional for having been issued beyond the powers of the President and for being in breach of existing laws.

The petitioner is a Filipino citizen and an employee of the Philippine Health Insurance Corporation (*PhilHealth*).[2] He is currently holding the position of Court Attorney IV and is assigned at the PhilHealth Regional Office CARAGA.[3]

Respondent Benigno Simeon C. Aquino III is the President of the Republic of the Philippines (*Pres. Aquino*); he issued EO 7 and has the duty of implementing it. Respondent Paquito N. Ochoa, Jr. is the incumbent Executive Secretary and, as the *alter ego* of Pres. Aquino, is tasked with the implementation of EO 7. Respondent Florencio B. Abad is the incumbent Secretary of the Department of Budget and Management (*DBM*) charged with the implementation of EO 7.[4]

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[1] *Rollo*, pp. 3-72.

[2] *Id.* at 13.

[3] *Id.* at 83.

[4] *Id.* at 13-14.

The Antecedent Facts

On July 26, 2010, Pres. Aquino made public in his first State of the Nation Address the alleged excessive allowances, bonuses and other benefits of Officers and Members of the Board of Directors of the Manila Waterworks and Sewerage System – a government owned and controlled corporation (*GOCC*) which has been unable to meet its standing obligations.[5] Subsequently, the Senate of the Philippines (*Senate*), through the Senate Committee on Government Corporations and Public Enterprises, conducted an inquiry in aid of legislation on the reported excessive salaries, allowances, and other benefits of GOCCs and government financial institutions (*GFIs*).[6]

Based on its findings that "officials and governing boards of various [GOCCs] and [GFIs] x x x have been granting themselves unwarranted allowances, bonuses, incentives, stock options, and other benefits [as well as other] irregular and abusive practices,"[7] the Senate issued Senate Resolution No. 17 "urging the President to order the immediate suspension of the unusually large and apparently excessive allowances, bonuses, incentives and other perks of members of the governing boards of [GOCCs] and [GFIs]."[8]

Heeding the call of Congress, Pres. Aquino, on September 8, 2010, issued EO 7, entitled "*Directing the Rationalization of the Compensation and Position Classification System in the*

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[5] *Id.* at 154.

[6] *Id.* at 158-159.

[7] The Senate Committee found that: "(a) the representatives of the Social Security Commission (SSC) to the Board of Directors of Philex Mining earned, in addition to their bonuses, some ₱55 million by way of stock options; (b) three SSC representatives in the Board of Directors of the Union Bank earned ₱46 million in bonuses in 2009, or around ₱15 million each; (c) the MWSS, despite incurring a loss of ₱3.5 billion in 2008, declared a bonus of ₱5 million to its board chairman in 2009 and granted 25 bonuses in one year; and (d) GOCCs have failed to comply with the requirement of R.A. No. 7656 to remit 50% of its net earnings to the national government." (*Id.* at 342).

[8] *Ibid.*

[GOCCs] and [GFIs], and for Other Purposes." EO 7 provided for the guiding principles and framework to establish a fixed compensation and position classification system for GOCCs and GFIs. A Task Force was also created to review all remunerations of GOCC and GFI employees and officers, while GOCCs and GFIs were ordered to submit to the Task Force information regarding their compensation. **Finally, EO 7 ordered (1) a moratorium on the increases in the salaries and other forms of compensation, except salary adjustments under EO 8011 and EO 900, of all GOCC and GFI employees for an indefinite period to be set by the President,**[9] **and (2) a suspension of all allowances, bonuses and incentives of members of the Board of Directors/Trustees until December 31, 2010**.[10]

EO 7 was published on September 10, 2010.[11] It took effect on September 25, 2010 and precluded the Board of Directors, Trustees and/or Officers of GOCCs from granting and releasing bonuses and allowances to members of the board of directors, and from increasing salary rates of and granting new or additional benefits and allowances to their employees.

The Petition

The petitioner claims that as a PhilHealth employee, he is affected by the implementation of EO 7, which was issued with

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[9] *Id.* at 18-24. Section 9 of EO 7 states:

Section 9. Moratorium on Increases in Salaries, Allowances, Incentives and Other Benefits. – Moratorium on increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits, except salary adjustments pursuant to Executive Order No. 8011 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010, are hereby imposed until specifically authorized by the President.

[10] Section 10 of EO 7 provides:

Section 10. Suspension of All Allowances, Bonuses and Incentives for Members of the Board of Directors/Trustees. – The grant of allowances, bonuses, incentives, and other perks to members of the board of directors/ trustees of GOCCs and GFIs, except reasonable per diems, is hereby suspended until December 31, 2010, pending the issuance of new policies and guidelines on the compensation of these board members.

[11] *Rollo,* p. 24.

grave abuse of discretion amounting to lack or excess of jurisdiction, based on the following arguments:

I.

EXECUTIVE ORDER NO. 7 IS NULL AND VOID FOR LACK OF LEGAL BASIS DUE TO THE FOLLOWING GROUNDS:

A. P.D. 985 IS NOT APPLICABLE AS BASIS FOR EXECUTIVE ORDER NO. 7 BECAUSE THE GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS WERE SUBSEQUENTLY GRANTED THE POWER TO FIX COMPENSATION LONG AFTER SUCH POWER HAS BEEN REVOKED BY P.D. 1597 AND R.A. 6758.

B. THE GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS DO NOT NEED TO HAVE ITS COMPENSATION PLANS, RATES AND POLICIES REVIEWED BY THE DBM AND APPROVED BY THE PRESIDENT BECAUSE P.D. 1597 REQUIRES ONLY THE GOCCs TO REPORT TO THE OFFICE TO THE PRESIDENT THEIR COMPENSATION PLANS AND RATES BUT THE SAME DOES NOT GIVE THE PRESIDENT THE POWER OF CONTROL OVER THE FISCAL POWER OF THE GOCCs.

C. J.R. NO. 4, [SERIES] 2009 IS NOT APPLICABLE AS LEGAL BASIS BECAUSE IT HAD NOT RIPENED INTO X X X LAW, THE SAME NOT HAVING BEEN PUBLISHED.

D. ASSUMING *ARGUENDO* THAT J.R. NO. 1, S. 2004 (sic) AND J.R. 4, S. 2009 ARE VALID, STILL THEY ARE NOT APPLICABLE AS LEGAL BASIS BECAUSE THEY ARE NOT LAWS WHICH MAY VALIDLY DELEGATE POWER TO THE PRESIDENT TO SUSPEND THE POWER OF THE BOARD TO FIX COMPENSATION.

II.

EXECUTIVE ORDER NO. 7 IS INVALID FOR DIVESTING THE BOARD OF DIRECTORS OF [THE] GOCCS OF THEIR POWER TO FIX THE COMPENSATION, A POWER WHICH IS A LEGISLATIVE GRANT AND WHICH COULD NOT BE REVOKED OR MODIFIED BY AN EXECUTIVE FIAT.

III.

EXECUTIVE ORDER NO. 7 IS BY SUBSTANCE A LAW, WHICH IS A DEROGATION OF CONGRESSIONAL PREROGATIVE AND IS THEREFORE UNCONSTITUTIONAL.

IV.

THE ACTS OF SUSPENDING AND IMPOSING MORATORIUM ARE ULTRA VIRES ACTS BECAUSE J.R. NO. 4 DOES NOT EXPRESSLY AUTHORIZE THE PRESIDENT TO EXERCISE SUCH POWERS.

V.

EXECUTIVE ORDER NO. 7 IS AN INVALID ISSUANCE BECAUSE IT HAS NO SUFFICIENT STANDARDS AND IS THEREFORE ARBITRARY, UNREASONABLE AND A VIOLATION OF SUBSTANTIVE DUE PROCESS.

VI.

EXECUTIVE ORDER NO. 7 INVOLVES THE DETERMINATION AND DISCRETION AS TO WHAT THE LAW SHALL BE AND IS THEREFORE INVALID FOR ITS USURPATION OF LEGISLATIVE POWER.

VII.

CONSISTENT WITH THE DECISION OF THE SUPREME COURT IN PIMENTEL V. AGUIRRE CASE, EXECUTIVE ORDER NO. 7 IS ONLY DIRECTORY AND NOT MANDATORY.[12]

The Case for the Respondents

On December 13, 2010, the respondents filed their Comment. They pointed out the following procedural defects as grounds for the petition's dismissal: (1) the petitioner lacks *locus standi*; (2) the petitioner failed to attach a board resolution or secretary's certificate authorizing him to question EO 7 in behalf of PhilHealth; (3) the petitioner's signature does not indicate his PTR Number, Mandatory Continuing Legal Education (*MCLE*) Compliance Number and Integrated Bar of the Philippines (*IBP*) Number; (4) the *jurat* of the Verification and Certification of

[12] *Id.* at 10-12.

Non-Forum Shopping failed to indicate a valid identification card as provided under A.M. No. 02-8-13-SC; (5) the President should be dropped as a party respondent as he is immune from suit; and (6) *certiorari* is not applicable to this case.[13]

The respondents also raised substantive defenses to support the validity of EO 7. They claim that the President exercises control over the governing boards of the GOCCs and GFIs; thus, he can fix their compensation packages. In addition, EO 7 was issued in accordance with law for the purpose of controlling the grant of excessive salaries, allowances, incentives and other benefits to GOCC and GFI employees. They also advocate the validity of Joint Resolution (J.R.) No. 4, which they point to as the authority for issuing EO 7.[14]

Meanwhile, on June 6, 2011, Congress enacted Republic Act (R.A.) No. 10149,[15] otherwise known as the "GOCC Governance Act of 2011." Section 11 of RA 10149 expressly authorizes the President to fix the compensation framework of GOCCs and GFIs.

The Court's Ruling

We resolve to DISMISS the petition for its patent formal and procedural infirmities, and for having been mooted by subsequent events.

A. *Certiorari* is not the proper remedy.

Under the Rules of Court, petitions for *Certiorari* and Prohibition are availed of to question judicial, quasi-judicial

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[13] Comment, pp. 39-62.

[14] *Id.* at 63-140.

[15] AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE IN GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST AND FOR OTHER PURPOSES.

and mandatory acts. Since the issuance of an EO is not judicial, quasi-judicial or a mandatory act, a petition for *certiorari* and prohibition is an incorrect remedy; instead a petition for declaratory relief under Rule 63 of the Rules of Court, filed with the Regional Trial Court (*RTC*), is the proper recourse to assail the validity of EO 7:

> Section 1. *Who may file petition*. Any person interested under a deed, will, contract or other written instrument, **whose rights are affected by** a statute, **executive order** or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (Emphases ours.)

Liga ng mga Barangay National v. City Mayor of Manila[16] is a case in point.[17] In *Liga*, we dismissed the petition for *certiorari* to set aside an EO issued by a City Mayor and insisted that a petition for declaratory relief should have been filed with the RTC. We painstakingly ruled:

> After due deliberation on the pleadings filed, we resolve to dismiss this petition for *certiorari*.
>
> *First*, the respondents neither acted in any judicial or quasi-judicial capacity nor arrogated unto themselves any judicial or quasi-judicial prerogatives. A petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure is a special civil action that may be invoked only against a tribunal, board, or officer exercising judicial or quasi-judicial functions.
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> Section 1, Rule 65 of the 1997 Rules of Civil Procedure provides:
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> SECTION 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions

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[16] 465 Phil. 529 (2004).

[17] We are aware of our ruling in *Pimentel, Jr. v. Hon. Aguirre*, 391 Phil. 84 (2000), where we gave due course to a petition for *certiorari* and prohibition to assail an "Administrative Order issued by the President." *Pimentel*, however, has no bearing in the present case since the propriety of the petition or the non-observance of the hierarchy-of-courts rule was not an issue therein.

> 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.

Elsewise stated, for a writ of *certiorari* to issue, the following requisites must concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting [to] lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

A respondent is said to be exercising *judicial function* where he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties.

Quasi-judicial function, on the other hand, is "a term which applies to the actions, discretion, *etc*., of public administrative officers or bodies … required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature."

Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the respective rights of the contending parties.

The respondents do not fall within the ambit of *tribunal, board, or officer exercising judicial or quasi-judicial functions*. As correctly pointed out by the respondents, the enactment by the City Council of Manila of the assailed ordinance and the issuance by respondent Mayor of the questioned executive order were done in the exercise of legislative and executive functions, respectively, and not of *judicial or quasi-judicial functions*. On this score alone, *certiorari* will not lie.

Second, although the instant petition is styled as a petition for *certiorari*, in essence, it seeks the declaration by this Court of the unconstitutionality or illegality of the questioned ordinance and executive order. It, thus, partakes of the nature of a petition for declaratory relief over which this Court has only appellate, not original, jurisdiction. Section 5, Article VIII of the Constitution provides:

> Sec. 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.
>
> (2) Review, revise, reverse, modify, or affirm on appeal or *certiorari* as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
>
> (a) All cases in which the *constitutionality or validity* of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, *ordinance*, or regulation is in question. (Italics supplied).

As such, this petition must necessar[ily] fail, as this Court does not have original jurisdiction over a petition for declaratory relief even if only questions of law are involved.[18]

Likewise, in *Southern Hemisphere Engagement Network, Inc. v. Anti Terrorism Council*,[19] we similarly dismissed the petitions for *certiorari* and prohibition challenging the constitutionality of R.A. No. 9372, otherwise known as the "Human Security Act of 2007," since the respondents therein (members of the Anti-Terrorism Council) did not exercise judicial or quasi-judicial functions.

While we have recognized in the past that we can exercise the discretion and rulemaking authority we are granted under

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[18] *Supra* note 16, at 540-542.

[19] G.R. Nos. 178552, 178554, 178581, 178890, 179157 and 179461, October 5, 2010, 632 SCRA 146.

the Constitution,[20] and set aside procedural considerations to permit parties to bring a suit before us at the first instance through *certiorari* and/or prohibition,[21] this liberal policy remains to be an exception to the general rule, and thus, has its limits. In *Concepcion v. Commission on Elections* (*COMELEC*),[22] we emphasized the importance of availing of the proper remedies and cautioned against the wrongful use of *certiorari* in order to assail the quasi-legislative acts of the COMELEC, especially by the wrong party. In ruling that liberality and the transcendental doctrine cannot trump blatant disregard of procedural rules, and considering that the petitioner had other available remedies (such as a petition for declaratory relief with the appropriate RTC under the terms of Rule 63 of the Rules of Court), as in this case, we categorically ruled:

> The petitioner's unusual approaches and use of Rule 65 of the Rules of Court do not appear to us to be the result of any error in reading Rule 65, given the way the petition was crafted. Rather, it was a backdoor approach to achieve what the petitioner could not directly do in his individual capacity under Rule 65. It was, at the very least, an attempted bypass of other available, albeit lengthier, modes of review that the Rules of Court provide. While we stop short of concluding that the petitioner's approaches constitute an abuse of process through a manipulative reading and application of the Rules of Court, **we nevertheless resolve that the petition should be dismissed for its blatant violation of the Rules. The transgressions alleged in a petition, however weighty they may sound, cannot be justifications for blatantly disregarding the rules of procedure, particularly when remedial measures were**

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[20] CONSTITUTION, Article VIII, Section 5(5).

[21] See *Pimentel, Jr. v. Hon. Aguirre*, *supra* note 16. We similarly glossed over the erroneous remedies the petitioners used in *Rivera v. Hon. Espiritu*, 425 Phil. 169 (2002), *Macalintal v. Commission on Elections*, 435 Phil. 586 (2003), and *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Barin*, G.R. No. 150974, June 29, 2007, 526 SCRA 1 recognizing that the procedural errors were overshadowed by the public interest involved and the crucial constitutional questions that the Court needed to resolve.

[22] G.R. No. 178624, June 30, 2009, 591 SCRA 420.

available under these same rules to achieve the petitioner's objectives. For our part, we cannot and should not – in the name of liberality and the "transcendental importance" doctrine – entertain these types of petitions. As we held in the very recent case of *Lozano, et al. vs. Nograles,* albeit from a different perspective, our liberal approach has its limits and should not be abused.[23] [emphasis supplied]

B. Petitioner lacks *locus standi.*

"*Locus standi* or legal standing has been defined as a **personal and substantial interest** in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[24] This requirement of standing relates to the constitutional mandate that this Court settle only actual cases or controversies.[25]

Thus, as a general rule, a party is allowed to "raise a constitutional question" when (1) he can show that he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[26]

Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental

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[23] *Id.* at 437.

[24] *Southern Hemisphere Engagement Network, Inc. v. Anti Terrorism Council, supra* note 19, at 167, citing *Anak Mindanao Party-List Group v. The Executive Secretary,* G.R. No. 166052, August 29, 2007, 531 SCRA 583, 591.

[25] *Lozano v. Nograles,* G.R. Nos. 187883 & 187910, June 16, 2009, 589 SCRA 356, 361.

[26] *Tolentino v. Commission on Elections*, 465 Phil. 385, 402 (2004).

interest. By real interest is meant a **present substantial interest**, as distinguished from a **mere expectancy** or a **future, contingent, subordinate, or consequential interest**."[27]

To support his claim that he has *locus standi* to file the present petition, the petitioner contends that as an employee of PhilHealth, he "stands to be prejudiced by [EO] 7, which suspends or imposes a moratorium on the grants of salary increases or new or increased benefits to officers and employees of GOCC[s] and x x x curtail[s] the prerogative of those officers who are to fix and determine his compensation."[28] The petitioner also claims that he has standing as a member of the bar in good standing who has an interest in ensuring that laws and orders of the Philippine government are legally and validly issued and implemented.

The respondents meanwhile argue that the petitioner is not a real party-in-interest since future increases in salaries and other benefits are merely contingent events or expectancies.[29] The petitioner, too, is not asserting a public right for which he is entitled to seek judicial protection. Section 9 of EO 7 reads:

> Section 9. **Moratorium on Increases in Salaries, Allowances, Incentives and Other Benefits**. –Moratorium on increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits, except salary adjustments pursuant to Executive Order No. 8011 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010, are hereby imposed until specifically authorized by the President. [*emphasis ours*]

In the present case, we are not convinced that the petitioner has demonstrated that he has a personal stake or material interest in the outcome of the case because his interest, if any, is speculative and based on a mere expectancy. In this case, the curtailment of future increases in his salaries and other benefits

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[27] *Stefan Tito Miñoza v. Hon. Cesar Tomas Lopez, etc., et al.,* G.R. No. 170914, April 13, 2011.

[28] *Rollo,* pp. 15-16.

[29] *Id.* at 179.

cannot but be characterized as contingent events or expectancies. To be sure, he has no vested rights to salary increases and, therefore, the absence of such right deprives the petitioner of legal standing to assail EO 7.

It has been held that as to the element of injury, such aspect is not something that just anybody with some grievance or pain may assert. It has to be **direct and substantial** to make it worth the court's time, as well as the effort of inquiry into the constitutionality of the acts of another department of government. If the asserted injury is more imagined than real, or **is merely superficial and insubstantial,** then the courts may end up being importuned to decide a matter that does not really justify such an excursion into constitutional adjudication.[30] The rationale for this constitutional requirement of *locus standi* is by no means trifle. Not only does it assure the vigorous adversary presentation of the case; more importantly, it must suffice to warrant the Judiciary's overruling the determination of a coordinate, democratically elected organ of government, such as the President, and the clear approval by Congress, in this case. Indeed, the rationale goes to the very essence of representative democracies.[31]

Neither can the lack of *locus standi* be cured by the petitioner's claim that he is instituting the present petition as a member of the bar in good standing who has an interest in ensuring that laws and orders of the Philippine government are legally and validly issued. This supposed interest has been branded by the Court in *Integrated Bar of the Phils. (IBP) v. Hon. Zamora*,[32]

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[30] See Rene B. Gorospe, *Songs, Singers and Shadows: Revisiting Locus Standi In Light Of The People Power Provisions Of The 1987 Constitution,* UST LAW REVIEW, Vol. LI, AY 2006-2007, pp. 15-16, citing *Montecillo v. Civil Service Commission,* G.R. No. 131954, June 28, 2001, 360 SCRA 99, 104; *Tomas Claudio Memorial College, Inc. v. Court of Appeals,* G.R. No. 124262, October 12, 1999, 316 SCRA 502, 508; and *Tañada v. Angara,* G.R. No. 118295, May 2, 1997, 272 SCRA 18, 79.

[31] *Id.* at 10-11, citing then Associate Justice Reynato S. Puno's Dissenting Opinion in *Kilosbayan v. Guingona, Jr.,* at 232 SCRA 110 (1994), at 169.

[32] 392 Phil. 618 (2000).

"as too general an interest which is shared by other groups and [by] the whole citizenry."[33] Thus, the Court ruled in *IBP* that the mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in that case. The Court made a similar ruling in *Prof. David v. Pres. Macapagal-Arroyo*[34] and held that the petitioners therein, who are national officers of the IBP, have no legal standing, having failed to allege any direct or potential injury which the IBP, as an institution, or its members may suffer as a consequence of the issuance of Presidential Proclamation No. 1017 and General Order No. 5.[35]

We note that while the petition raises vital constitutional and statutory questions concerning the power of the President to fix the compensation packages of GOCCs and GFIs with possible implications on their officials and employees, the same cannot "infuse" or give the petitioner *locus standi* under the transcendental importance or paramount public interest doctrine. In *Velarde v. Social Justice Society*,[36] we held that even if the Court could have exempted the case from the stringent *locus standi* requirement, such heroic effort would be futile because the transcendental issue could not be resolved any way, **due to procedural infirmities and shortcomings**, as in the present case.[37] In other words, giving due course to the present petition which is saddled with formal and procedural infirmities explained above in this Resolution, cannot but be an exercise in futility that does not merit the Court's liberality. As we emphasized in

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[33] *Id.* at 633.

[34] 522 Phil. 705 (2006).

[35] *Id.* at 764. The Court in these two above-cited cases, however, brushed aside therein petitioners' lack of *locus standi* in view of transcendental issues raised in these cases.

[36] G.R. No. 159357, April 28, 2004, 428 SCRA 283.

[37] Rene B. Gorospe, *Songs, Singers and Shadows: Revisiting Locus Standi In Light Of The People Power Provisions Of The 1987 Constitution*, UST LAW REVIEW, *supra* note 30, at 53, citing *Velarde v. Social Justice Society, id.* at 298.

Lozano v. Nograles,[38] "**while the Court has taken an increasingly liberal approach to the rule of *locus standi*, evolving from the stringent requirements of 'personal injury' to the broader 'transcendental importance' doctrine, such liberality is not to be abused.**"[39]

Finally, since the petitioner has failed to demonstrate ***a material and personal interest*** in the issue in dispute, he cannot also be considered to have filed the present case as a representative of PhilHealth. In this regard, we cannot ignore or excuse the blatant failure of the petitioner to provide a Board Resolution or a Secretary's Certificate from PhilHealth to act as its representative.

C. The petition has a defective *jurat*.

The respondents claim that the petition should be dismissed for failing to comply with Section 3, Rule 7 of the Rules of Civil Procedure, which requires the party or the counsel representing him to sign the pleading and indicate an address that should not be a post office box. The petition also allegedly violated the Supreme Court *En Banc* Resolution dated November 12, 2001, requiring counsels to indicate in their pleadings their Roll of Attorneys Number, their PTR Number and their IBP Official Receipt or Lifetime Member Number; otherwise, the pleadings would be considered unsigned and dismissible. Bar Matter No. 1922 likewise states that a counsel should note down his MCLE Certificate of Compliance or Certificate of Exemption in the pleading, but the petitioner had failed to do so.[40]

We do not see any violation of Section 3, Rule 7 of the Rules of Civil Procedure as the petition bears the petitioner's signature and office address. The present suit was brought

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[38] *Supra* note 25.

[39] *Id.* at 362.

[40] *Rollo*, pp. 183-190.

before this Court ***by the petitioner himself as a party litigant*** and not through counsel. Therefore, the requirements under the Supreme Court *En Banc* Resolution dated November 12, 2001 and Bar Matter No. 1922 do not apply. In Bar Matter No. 1132, April 1, 2003, we clarified that a party who is not a lawyer is not precluded from signing his own pleadings as this is allowed by the Rules of Court; the purpose of requiring a counsel to indicate his IBP Number and PTR Number is merely to protect the public from bogus lawyers. A similar construction should be given to Bar Matter No. 1922, which requires lawyers to indicate their MCLE Certificate of Compliance or Certificate of Exemption; otherwise, the provision that allows parties to sign their own pleadings will be negated.

However, the point raised by the respondents regarding the petitioner's defective *jurat* is correct. Indeed, A.M. No. 02-8-13-SC, dated February 19, 2008, calls for a current identification document issued by an official agency bearing the photograph and signature of the individual as competent evidence of identity. Nevertheless, we hasten to clarify that the defective *jurat* in the Verification/Certification of Non-Forum Shopping is not a fatal defect, as we held in *In-N-Out Burger, Inc. v. Sehwani, Incorporated*.[41] The verification is only a formal, not a jurisdictional, requirement that the Court may waive.

D. The petition has been mooted by supervening events.

Because of the transitory nature of EO 7, it has been pointed out that the present case has already been rendered moot by these supervening events: (1) the lapse on December 31, 2010 of Section 10 of EO 7 that suspended the allowances and bonuses of the directors and trustees of GOCCs and GFIs; and (2) the enactment of R.A. No. 10149 amending the provisions in the charters of GOCCs and GFIs empowering their board of directors/ trustees to determine their own compensation system, in favor of the grant of authority to the President to perform this act.

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[41] G.R. No. 179127, December 24, 2008, 575 SCRA 535, 555.

With the enactment of the GOCC Governance Act of 2011, the President is now authorized to fix the compensation framework of GOCCs and GFIs. The pertinent provisions read:

Section 5. *Creation of the Governance Commission for Government-Owned or -Controlled Corporations*. — There is hereby created an advisory, monitoring, and oversight body with authority to formulate, implement and coordinate policies to be known as the Governance Commission for Government-Owned or-Controlled Corporations, hereinafter referred to as the GCG, which shall be attached to the Office of the President. The GCG shall have the following powers and functions:

x x x x x x x x x

h) Conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent, at the same time allowing the GOCC to be financially sound and sustainable;

x x x x x x x x x

Section 8. *Coverage of the Compensation and Position Classification System*. — The GCG, after conducting a compensation study, shall develop a Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to approval of the President.

Section 9. *Position Titles and Salary Grades*. — All positions in the Positions Classification System, as determined by the GCG and as approved by the President, shall be allocated to their proper position titles and salary grades in accordance with an Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System, which shall be prepared by the GCG and approved by the President.

x x x x x x x x x

[N]o GOCC shall be exempt from the coverage of the Compensation and Position Classification System developed by the GCG under this Act.

As may be gleaned from these provisions, the new law amended R.A. No. 7875 and other laws that enabled certain GOCCs and GFIs to fix their own compensation frameworks; the law now authorizes the President to fix the compensation and position classification system for all GOCCs and GFIs, as well as other entities covered by the law. This means that, the President can now reissue an EO containing these same provisions without any legal constraints.

A moot case is "one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value."[42] "[A]n action is considered 'moot' when it no longer presents a justiciable controversy because the issues involved have become academic or dead[,] or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties x x x. Simply stated, there is nothing for the x x x court to resolve as [its] determination x x x has been overtaken by subsequent events."[43]

This is the present situation here. Congress, thru R.A. No. 10149, has expressly empowered the President to establish the compensation systems of GOCCs and GFIs. For the Court to still rule upon the supposed unconstitutionality of EO 7 will merely be an academic exercise. Any further discussion of the constitutionality of EO 7 serves no useful purpose since such issue **is moot in its face** in light of the enactment of R.A. No. 10149. In the words of the eminent constitutional law expert, Fr. Joaquin Bernas, S.J., "the Court normally [will not] entertain a petition touching on an issue that has become moot because x x x there would [be] no longer x x x a 'flesh and blood' case for the Court to resolve."[44]

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[42] *Funa v. Ermita,* G.R. No. 184740, February 11, 2010, 612 SCRA 308, 319.

[43] *Santiago v. CA,* 348 Phil. 792, 800 (1998).

[44] See J. Brion Concurring and Dissenting Opinion in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP),* G.R. Nos. 183591, 183752, 183893, 183951, & 183962, October 14, 2008, 568 SCRA 402, 703.

All told, in view of the supervening events rendering the petition moot, as well as its patent formal and procedural infirmities, we no longer see any reason for the Court to resolve the other issues raised in the *certiorari* petition.

WHEREFORE, premises considered, the petition is **DISMISSED**. No costs.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Corona, C.J., see separate opinion.

Del Castillo, J., on official leave.

Sereno, J., on leave.

SEPARATE OPINION

CORONA, *C.J.*:

Most GOCCs are incurring significant financial losses. Budgetary support to the total government corporate sector (including government financial institutions, social security institutions, and GOCCs providing goods and services to the public) amounted to ₱80.4 billion during 2000–2004. In addition, indirect support, in the form of guarantees on GOCC obligations, is also in the billions of pesos. In the past 5 years, there has been a noticeable increase in the aggregate deficit of the 14 monitored GOCCs,[1] *bringing their financial viability into*

[1] These are Home Guaranty Corporation, Light Rail Transit Authority, Local Water Utilities Administration, Manila Waterworks and Sewerage System, National Development Corporation, National Electrification Administration, National Food Authority, National Housing Authority, National Irrigation Authority, National Power Corporation (by virtue of the Electric Power Industry Reform Act, the Power Sector Assets and Liabilities Management Corporation and the National Transmission Corporation are added to the list), Philippine Economic Zone Authority, Philippine National Oil Corporation, Philippine National Railway, and Philippine Ports Authority. There are 722 more GOCCs whose operations are barely monitored.

question. While the 14 monitored GOCCs' current and capital expenditures fluctuated around 6% of GDP, revenues have fallen from 5% to 4.1% of GDP over 2000–2004, increasing the deficit of the monitored GOCCs from 0.6% to 1.8% of GDP over the same period. ***In 2004, the monitored GOCCs' consolidated deficit was ₱85.4 billion, a more than fourfold increase from the 2000 level of ₱19.2 billion.*** *The 2004 deficit is already about the same size as the potential new revenues collected through the expanded value-added tax law.* ***There are various reasons for the ballooning GOCC deficits, including*** *(i) failure to adjust tariff rates, (ii) large capital requirements, and (iii)* ***operational and management inefficiencies.***[2]

Accountability in public office requires rationality and efficiency in both administrative and financial operations of all government offices, government-owned and controlled corporations (GOCCs) included. As a corollary, public funds must be utilized in a way that will promote transparency, accountability and prudence.

The nation was recently informed that GOCCs, most of which enjoyed privileges not afforded to other offices and agencies of the National Government, suffer from serious fiscal deficit. Yet, officers and employees of these GOCCs continue to receive hefty perks and excessive allowances presenting a stark disconnect and causing the further depletion of limited resources. In the face of such situation, where the President as Chief Executive makes a decisive move to stave off the financial hemorrhage and administrative inefficiency of government corporations, the Court should not invalidate the Chief Executive's action without a clear showing of grave abuse of discretion on his part.

FACTUAL ANTECEDENTS

In his first State of the Nation Address, President Benigno Simeon C. Aquino III exposed anomalies in the financial management of the Metropolitan Waterworks and Sewerage

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[2] Asian Development Bank Technical Assistance Report, Republic of the Philippines: Government-Owned and -Controlled Corporations Reform, June 2006. Accessed on 14 July 2011 through http://www.adb.org/documents/tars/phi/39606-phi-tar.pdf. Emphasis supplied.

System, the National Power Corporation and the National Food Authority. These revelations prompted the Senate to conduct legislative inquiries on the matter of the activities of GOCCs. Appalled by its findings, the Senate issued Resolution No. 17, s. 2010, urging the President to order the immediate suspension of the unusually large and excessive allowances, bonuses, incentives and other perks of members of the governing boards of GOCCs and government financial institutions (GFIs). Thus, on September 8, 2010, President Benigno Simeon C. Aquino III issued Executive Order No. 7[3] (EO 7) strengthening the supervision of the compensation levels of GOCCs and GFIs by controlling the grant of excessive salaries, allowances, incentives and other benefits.[4]

EO 7 imposes a moratorium on increases in salaries, allowances, incentives and other benefits of GOCCs and GFIs, except salary adjustments pursuant to EO 8011 dated June 17, 2009 and EO 900 dated June 23, 2010.[5] It suspended the allowances, bonuses and other perks enjoyed by the boards of directors/trustees of GOCCs and GFIs until December 31, 2010, pending the issuance of new policies and guidelines on the compensation packages of GOCCs and GFIs.[6] In addition, it provides for the creation of a Task Force on Corporate Compensation (TFCC) to undertake a review of all remunerations granted to members of the board of directors, officers and rank-and-file employees, as well as discretionary funds of GOCCs and GFIs.[7] It mandates the submission of information on all personnel remuneration from all GOCCs and GFIs to the TFCC.[8] Lastly, it establishes guiding

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[3] *Directing the Rationalization of the Compensation and Position Classification System in Government-Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs), and for Other Purposes*. It took effect on September 25, 2010.

[4] Third Whereas Clause.

[5] Sec. 9.

[6] Sec. 10.

[7] Sec. 7.

[8] Sec. 8.

principles as well as a total compensation framework for the rationalization of the compensation and position classification system in GOCCs and GFIs.[9]

The constitutionality of EO 7 is now being challenged by petitioner Jelbert B. Galicto who brings this petition for *certiorari* and prohibition in his capacity as a lawyer and as an employee of the Philippine Health Insurance Corporation (PhilHealth) Regional Office–Butuan City. Essentially, he questions the authority of the President to issue EO 7. He likewise assails the constitutionality of EO 7 for allegedly violating his right to property without due process of law.

The *ponencia* of Justice Arturo D. Brion dismisses the petition for being replete with formal and procedural defects and for having been rendered moot by supervening events.

I agree with the *ponencia's* thorough discussion and correct disposition. Nevertheless, I am submitting this opinion to express my thoughts on matters which I believe to be equally important considerations in the resolution of this case.

Fundamental considerations governing the exercise of the power of judicial review require the Court to exercise restraint in nullifying the act of a co-equal and coordinate branch. Here, the justiciability doctrines of standing and mootness work against petitioner.

Moreover, a careful consideration of the respective arguments of the parties compels sustaining the validity of EO 7. The President as Chief Executive has the legal authority to issue EO 7. Furthermore, petitioner failed to show that the President committed grave abuse of discretion in directing the rationalization of the compensation and position classification system in GOCCs and GFIs.

LACK OF STANDING AND MOOTNESS

The power of judicial review is a sword that must be unsheathed with restraint. To ensure this, certain justiciability doctrines

[9] Secs. 2 and 3.

must be complied with as a prerequisite for the Court's exercise of its awesome power to declare the act of a co-equal branch invalid for being unconstitutional. These doctrines are important as they are intertwined with the principle of separation of powers.[10] They help define the judicial role; they determine when it is appropriate for courts to review (a legal issue) and when it is necessary to defer to the other branches of government.[11]

Among the justiciability doctrines are standing and mootness. Petitioner failed to observe both.

Courts do not decide all kinds of cases dumped on their laps and do not open their doors to all parties or entities claiming a grievance.[12] *Locus standi* is intended to assure a vigorous adversary presentation of the case. More importantly, it warrants the judiciary's overruling the determination of a coordinate, democratically elected organ of government. It thus goes to the very essence of representative democracies.[13]

Petitioner, for himself, asserts his right to question the constitutionality of EO 7 on two grounds. First, as an employee of PhilHealth, he allegedly stands to be prejudiced by EO 7 insofar as it suspends or imposes a moratorium on the grant of salary increases and other benefits to employees and officials of GOCCs and GFIs and curtails the prerogatives of the officers responsible for the fixing and determination of his compensation. Second, as a lawyer, he claims to have an interest in making sure that laws and orders by government officials are legally and validly issued and implemented.

Petitioner cannot sufficiently anchor his standing to bring this action on account of his employment in PhilHealth, a GOCC covered by EO 7. He cannot reasonably expect this Court to symphatize with his lament that the law impedes or

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[10] Chemerinsky, Erwin, *CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES*, Third Edition (2006), p. 51.

[11] *Id.*

[12] *Lozano v. Nograles*, G.R. No. 187883, June 16, 2009.

[13] *Id.*

threatens to impede his right to receive future increases as well as the right of members of the board of directors of Philhealth to allowances and bonuses.

The irreducible minimum condition for the exercise of judicial power is a requirement that a party "show he personally has suffered some actual or threatened injury" to his rights.[14] A party who assails the constitutionality of a statute or an official act must have a direct and personal interest. He must show not only that the law or any governmental act is invalid, but also that **he sustained or is in immediate danger of sustaining some direct injury** as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. **He must show that he has been or is about to be denied some right or privilege to which he is lawfully entitled** or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[15]

For this reason, petitioner's reliance on his status as PhilHealth employee, without more, is a frail thread that fails to sustain the burden of *locus standi* required of anyone who may properly invoke the Court's power of judicial review.

EO 7 simply imposes a moratorium on increases in salaries, allowances and other benefits of officials and employees of GOCCs and GFIs and directs the suspension of all allowances bonuses and incentives of GOCC and GFI officials. *Moratorium* is defined as an authorized postponement in the performance of an obligation or a suspension of a specific activity.[16] Section 9 of EO 7 is not a permanent prohibition on petitioner's perceived right to receive future increases. Nor is it an absolute ban on salary increases as it ensures that, like all other officials and employees of the government, officials and employees of

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[14] *Valley Forge Christian College v. Americans United for separation of Church and State,* 454 U.S. 464 (1982).

[15] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council,* G.R. No. 178552, October 5, 2010. Emphasis supplied.

[16] *Black's Law Dictionary,* Eighth Edition, page 1031.

GOCCs and GFIs will continue to enjoy the salary increases mandated under EO 8011 dated June 17, 2009 and EO 900 dated June 23, 2010.

While one's employment is a constitutionally-protected property right, petitioner does not claim that his employment is at risk under EO 7. Petitioner is simply concerned about his entitlement to future salary increases. However, a public officer has a vested right only to salaries already earned or accrued.[17] Salary increases are a mere expectancy.[18] They are by nature volatile and dependent on numerous variables, including the company's fiscal situation, the employee's future performance on the job, or the employee's continued stay in a position.[19] Thus, petitioner does not have a "right" to an increase in salary. There is no vested right to salary increases.[20] There must be a lawful decree or order supporting an employee's claim.[21] In this case, petitioner failed to point to any lawful decree or order supporting his entitlement to future increases in salary, as no such decree or order yet exists.

It is, however, contended that petitioner does not claim any right to any future increase. He merely seeks to remove any legal impediment to his receiving future increases. It is asserted that, without the legal impediment provided under Section 9 of EO 7, any future increase in petitioner's compensation will simply depend on the usual factors considered by the proper authorities. I fear this view is misleading and incorrect.

It is misleading because, by re-working the concept of injury, it diverts the focus from the required right-centric approach to the concept of injury as an element of *locus standi*. Injury or threat of injury, as an element of legal standing, refers to a

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[17] See *Fisk v. Jefferson*, 116 U.S. 131 (1885).

[18] *House of Sara Lee v. Rey*, G.R. No. 149013, August 31, 2006.

[19] *Id.*

[20] *Boncodin v. National Power Corporation Employees Consolidated Union (NECU)*, G.R. No. 162716, September 27, 2006.

[21] *Id.*

denial of a right or privilege. It does not include the denial of a reasonable expectation.

The argument is likewise incorrect because petitioner's reasonable expectation of any future salary increase is subject to presidential approval. Even without Section 9 of EO 7, the President may disallow any salary increase in RA 6758[22] – exempt entities. Section 9 of Joint Resolution No. 4, Section 59 of the General Provisions of RA 9970[23] and Section 56 of the General Provisions of RA 10147[24] expressly confer on the President the authority to approve or disapprove "any grant of or increase in salaries, allowances, and other fringe benefits" in entities exempt from the coverage of RA 6758. The approval of the President, upon the favorable recommendation of the Department of Budget and Management (DBM), is among the "usual factors" that will determine any future salary increase that may be reasonable expected to be received by petitioner.

Petitioner cannot also lay claim to any direct personal injury to his right or interest arising from the suspension under Section 10 of EO 7 of allowances and bonuses enjoyed by the board of directors/trustees of GOCCs and GFIs. He is not a member of the board of directors of Philhealth.

Neither can petitioner rely on his membership in the Philippine Bar to support his legal standing. Mere interest as a member of the Bar[25] and an empty invocation of a duty in "making sure that laws and orders by officials of the Philippine government are legally issued and implemented" does not suffice to clothe one with standing.[26]

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[22] Compensation and Position Classification Act of 1989.

[23] General Appropriations Act of FY 2010.

[24] General Appropriations Act of FY 2011.

[25] *Francisco v. House of Representatives,* G.R. No. 160261, November 10, 2003.

[26] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 03, 2006.

It is clear from the foregoing that petitioner failed to satisfy the irreducible minimum condition that will trigger the exercise of judicial power. Lacking a leg on which he may base his personality to bring this action, petitioner's claim of sufficient standing should fail.

Even assuming that petitioner had standing at the time he commenced this petition, subsequent events have rendered his petition moot.

For one, the effectivity of the suspension of allowances and bonuses enjoyed by the board of directors/trustees of GOCCs and GFIs under Section 10 of EO 7 already lapsed on December 31, 2010.[27] Thus, a review of the constitutionality of that provision is no longer necessary and its invalidation improper. The unnecessary invalidation of Section 10 of EO 7 might not only betray injudiciousness on the part of the Court but also needlessly put the Chief Executive, the head of a co-equal branch, in a bad light for issuing an invalid provision. Thus, the undue disregard of the mootness doctrine in connection with Section 10 of EO 7 would inflict severe collateral damage to judicial modesty and inter-branch courtesy.

Moreover, as the *ponencia* correctly ruled, the enactment of RA[28] 10149[29] has rendered the issue as to the validity of EO 7 effectively moot. With RA 10149, Congress affirmed the power of the President as enunciated in EO 7 to set guidelines and components of a rationalized compensation and position classification for all GOCC and GFI employees.

If a case is moot, there is no longer an actual controversy between adverse litigants.[30] Also, if events subsequent to the initiation of the lawsuit have resolved the matter, then the

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[27] The suspension was extended until 31 January 2011 by EO 19 dated 30 December 2010.

[28] Republic Act.

[29] GOCC Governance Act of 2011.

[30] Chemerinsky, *supra* note 10, p. 114.

decision of the court on that issue is not likely to have any meaningful effect.[31]

With the recognition that RA 10149 mooted the challenge to EO 7, the Court must act with circumspection and prudence, bearing in mind that due respect for a co-equal branch necessitates that the presumption of legality and constitutionality afforded to the said provisions should no longer be disturbed.

CONSISTENCY WITH EXISTING LAWS

Sections 2 to 6 of EO 7 is an enumeration of the guidelines and components of a rationalized compensation and position classification for GOCCs and GFIs that the President intends to establish. In particular, Section 2 provides the guiding principles; Section 3 discusses the total compensation framework; Section 4 pertains to the standard components of the compensation and position classification system; Section 5 involves the rationalization of indirect compensation and Section 6 lists the considerations in setting compensation levels.

Petitioner claims that these provisions are invalid because they violate existing laws, namely Section 16(n) of RA 7875[32] (the charter of Philhealth) and Section 9 of Joint Resolution No. 4[33] of the Senate and the House of Representatives.

Petitioner finds fault in the failure of EO 7 to correctly distinguish between GOCCs and GFIs that have been exempted by law from RA 6758, as amended, and those that are within its coverage.

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[31] *Id.*

[32] *An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose.* It is otherwise known as the "National Health Insurance Act of 1995."

[33] *Joint Resolution Authorizing the President of the Philippines to Modify the Compensation and Position Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for Other Purposes.*

RA 6758, as amended, vests the Department of Budget and Management (DBM), which is under the control of the President, the authority to establish and administer a compensation and position classification system. On the other hand, Section 16(n) of RA 7875 gives the board of directors of Philhealth the authority to appoint its own personnel and to fix their compensation, with the exception of the Philhealth president whose appointment and compensation require approval of the President. For petitioner, EO 7 violates Section 16(n) of RA 7875 by vesting on the DBM and the President the power to determine the compensation of Philhealth employees.

Joint Resolution No. 4 authorizes the President to modify the compensation and position classification system under RA 6758 of civilian personnel, among others. Section 9 of Joint Resolution No. 4 recognizes the distinct character of exempt entities and provides that such entities shall be governed by their respective compensation and position classification system. For petitioner, by using the guidelines, standards and components of standardized compensation framework provided under Joint Resolution No. 4 and applying them to all GOCCs and GFIs, EO 7 contravenes Joint Resolution No. 4 itself. In particular, EO 7 disregards the substantial distinction made under Section 9 of Joint Resolution No. 4 insofar as the right of exempt GOCCs to set their own compensation and position classification systems is concerned.

Petitioner is wrong. EO 7 is consistent with laws, including RA 7875 and Joint Resolution No. 4.

True, Congress carved exceptions to RA 6758, as amended, when it created GOCCs and GFIs which have been granted the authority to determine their own compensation and position classification system. Philhealth, governed by RA 7875, is one of these RA 6758-exempt entities.

It is likewise true that Section 9 of Joint Resolution No. 4 recognizes the authority granted to exempt entities like Philhealth to determine their own compensation and position classification system. Nonetheless, the said provision also provides that exempt entities "**shall observe the policies, parameters and guidelines**

governing position classification, salary rates, categories and rates of allowances, benefits and incentives prescribed by the President."

For purposes of clarity, Section 9 of Joint Resolution No. 4 provides:

(9) Exempt Entities – Government agencies which by specific provision/s of laws are authorized to have their own compensation and position classification system shall not be entitled to the salary adjustments provided herein. Exempt entities shall be governed by their respective Compensation and Position Classification System: ***Provided*, That such entities shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives prescribed by the President**: ***Provided, further*, That any increase in the existing salary rates thereof shall be subject to the approval by the President, upon the recommendation of the DBM**: *Provided, finally*, That exempt entities which still follow the salary rates for positions covered by [RA 6758], as amended, are entitled to the salary adjustments due to the implementation of this Joint Resolution, until such time that they have implemented their own compensation and position classification system. (Emphasis supplied)

Provisions of law should be read and understood in their entirety and all parts thereof should be seen as constituting a coherent whole. In this context, the recognition under Section 9 of Joint Resolution No. 4 of the authority granted to exempt entities like Philhealth to determine their own compensation and position classification system seeks to exclude them from the salary adjustments provided in Joint Resolution No. 4. This would have the effect of retaining the existing compensation levels in the said exempt entities at that time. It would prevent both diminution, in case their existing compensation levels are higher than the salary adjustments, and also increase, which would have enlarged the pay disparity between those covered by RA 6758 and exempt entities. To ensure observance of the distinction between RA 6758-covered and RA 6758-exempt entities and, at the same time, forestall any unnecessary or excessive dissimilarity in compensation and position classification systems

may occur as a result of the distinctions, exempt entities are required to observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives prescribed by the President. This is a recognition by Congress of the authority of the President to issue policies, parameters and guidelines that will govern the determination by exempt entities of their respective compensation and position classification systems. As a further safeguard against any abuse or misuse of their exclusion from RA 6758, any increase in existing salary rates of exempt entities are mandated to have the imprimatur of the President, upon the recommendation of the DBM. This second proviso complements and enhances the first proviso. It gives the President the opportunity to ascertain whether salary increases in exempt entities are in accordance with the prescribed policies, parameters and guidelines on compensation and position classification system. As a final proviso, exempt entities which still follow the salary rates for positions covered by RA 6758 are entitled to the salary adjustments under Joint Resolution No. 4, until such time as they have implemented their own compensation and position classification system. Again, this acknowledges the status of exempt entities and prevents the effective diminution of their salary rates.

Taken as a cohesive whole, Section 9 of Joint Resolution No. 4 pertains to the **effect on and applicability to RA 6758-exempt entities of the salary adjustments** provided under the said Joint Resolution. It prohibits RA 6758-exempt entities from availing of the beneficial effects of the salary adjustments provided therein, unless such entities still follow the salary rates for positions covered by RA 6758 and only "until such time that they have implemented their own compensation and position classification system." However, **there is nothing there which limits or constricts the power of the President as Chief Executive to prescribe such policies, parameters and guidelines which in his discretion would best serve public interest by regulating the compensation and position classification system of RA 6758-exempt entities**. There is nothing there that prevents or prohibits him from adopting the

same or similar policies, parameters and guidelines provided for in the said Joint Resolution. Viewed in this light, Sections 2 to 6 of EO 7 cohere with the objectives of Joint Resolution No. 4 and other laws relevant to it.

Petitioner further asserts as invalid insofar as Philhealth is concerned the second proviso in Section 9 of Joint Resolution No. 4. The said proviso requires that any increase in the existing salary rates in RA 6758-exempt entities shall be subject to the approval by the President, upon the recommendation of the DBM. For petitioner, this proviso amends or repeals the grant of authority under RA 7875 to fix the compensation of Philhealth's personnel to Philhealth's board of directors. Petitioner, however, maintains that a joint resolution cannot be used to repeal another law simply because it is not a law.

Under the Rules of both the Senate and the House of Representatives,[34] a joint resolution, like a bill, is required to be enrolled, examined, undergo three readings and signed by the presiding officer of each House. A joint resolution, like a bill, is also presented to the President for approval. There is no real difference between a bill and a joint resolution.[35] A joint resolution also satisfies the two requisites before a bill becomes law – approval by both Houses of Congress after three readings and approval by the President. Thus, a joint resolution, upon approval by the President, is law. Even the Rules of the House of Representatives acknowledge this:

> SEC. 58. *Third Reading.* x x x
>
> No bill or joint resolution **shall become law** unless it passes three (3) readings on separate days and printed copies thereof in its final form are distributed to the Members three (3) days before its passage except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. (Emphasis supplied)

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[34] Rules XXI, XXII, XXIII and XXV for the Senate and Rule X for the House of representative.

[35] http://www.senate.gov.ph/about/legpro.asp (last visited July 13, 2011).

Joint Resolution No. 4 was approved by both Houses of Congress after three readings. President Gloria Macapagal-Arroyo approved it on June 17, 2009. It was published in the Manila Times on June 20, 2009 and in Volume 105, No. 34 of the Official Gazette on August 24, 2009. It is therefore a law.

As law, Joint Resolution No. 4 may therefore amend or repeal RA 7875, if the second proviso of Section 9 indeed it modifies RA 7875. However, the said proviso may be read in a way that does not require it to be seen as an implied amendment of RA 7875. It can be simply read as a necessary adjunct of the authority to prescribe policies, parameters and guidelines on compensation and position classification system for exempt entities. Without it, the President would have no way to check if the prescribed policies, parameters and guidelines are actually observed.

Nevertheless, Section 59 of the General Provisions of RA 9970 and Section 56 of the General Provisions of RA 10147 identically provide:

> SEC. 59. *Special Compensation and Other Benefits*. **GOCCs, including GFIs, who are exempt from, or are legally enjoying special compensation and other benefits which are subject to those authorized under R.A. No. 6758, as amended,** shall be governed by such special laws: **PROVIDED, That they shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits, and incentives prescribed by the President**; **PROVIDED, FURTHER, That they shall submit their existing compensation and position classification systems and their implementation status to the DBM**; **PROVIDED, FURTHERMORE, That any grant of or increase in salaries, allowances, and other fringe benefits shall be subject to the approval of the President, upon favorable recommendation of the DBM**: PROVIDED, FINALLY, That they shall not be entitled to benefits accruing to government employees covered by R.A. No. 6758, as amended, if they are already receiving similar or equivalent benefits under their own compensation scheme. (Emphasis supplied)

Section 59 of the General Provisions of RA 9970 and Section 56 of the General Provisions of RA 10147 completely

debunk the conclusion that Sections 2 to 6 violate existing laws. Specifically with respect to all RA 6758-exempt GOCCs and GFIs, they recognize the authority of the President as exercised in Sections 2 to 6 of EO 7 to prescribe policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits, and incentives. Specifically with respect to all RA 6758-exempt GOCCs and GFIs, they acknowledge the President's power to approve or disapprove "any grant of or increase in salaries, allowances, and other fringe benefits."

Joint Resolution No. 4, Section 59 of the General Provisions of RA 9970 and Section 56 of the General Provisions of RA 10147 reinforce the rule that "sound management and effective utilization of financial resources of government are basically executive functions."[36] As a necessary incident thereof, the President as Chief Executive has the legal competence to exercise his power of control of all the executive departments, bureaus and offices,[37] including GOCCs and GFIs.[38] EO 7 is simply an exercise by the President of that power of control.

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[36] *Blaquera v. Alcala*, G.R. No. 109406, 11 September 1998, citing Book IV of Executive Order No. 292 whose applicable provisions follow:

Section 1. Declaration of Policy. – It is the policy of the State that the Department of Finance shall be primarily responsible for the sound and efficient management of the financial resources of the Government, its subdivisions, agencies and instrumentalities. (Title II)

Section 1. Declaration of Policy. – The national budget shall be formulated and implemented as an instrument of national development, reflective of national objectives and plans; supportive of and consistent with the socio-economic development plans and oriented towards the achievement of explicit objectives and expected results, to ensure that the utilization of funds and operations of government entities are conducted effectively; formulated within the context of a regionalized governmental structure and within the totality of revenues and other receipts, expenditures and borrowings of all levels of government-owned or controlled corporations; and prepared within the context of the national long-term plans and budget programs of the Government. (Title XVII)

[37] Section 17, Article VII: "The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed."

[38] *NAMARCO v. Arca*, 9 SCRA 648 (1969).

In sum, the guidelines in Sections 2 to 6 of EO 7 are within the bounds of authority conferred on the President by the Constitution and various laws. Such regulatory powers cover all GOCCs and GFIs, regardless of coverage in or exemption from the salary standardization laws. In issuing EO 7, the President does not encroach on the authority of the legislature to make laws as he is merely enforcing the law:

> While Congress is vested with the power to enact laws, the President executes the laws. The executive power is vested in the President. It is generally defined as the power to enforce and administer the laws. It is the power of carrying (out) the laws into practical operation and enforcing their due observance.[39]

It is fundamental that no person shall be deprived of life, liberty or property without due process of law.[40] Hence, the premise of a valid due process claim, whether substantive or procedural, is the dispossession of life or liberty or property. Where there is no deprivation of life, liberty or property, no meaningful claim of denial of due process may be made.

As discussed earlier, the imposition of a moratorium on increases in salaries, allowances and other benefits of officers and employees of GOCCs and GFIs, except salary adjustments under EO 8011 dated June 17, 2009 and EO 900 dated June 23, 2010, does not constitute a deprivation of property. In fact, it ensures that, like all other officials and employees of the government, officials and employees of GOCCs and GFIs will continue to enjoy the salary increases granted under EO 8011 dated June 17, 2009 and EO 900 dated June 23, 2010.

More importantly, the right of a public officer to receive compensation can only arise out of the rendition of the public services related to his or her office.[41] The right to compensation arises out of the performance by the public officer of his duties.[42]

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[39] *Ople vs. Torres*, 293 SCRA 141 (1998).

[40] Section 1, Article III, Constitution.

[41] 63C AmJur 2d 716, Public Officers and Employees, Sec. 272.

[42] *Id*.

Thus, a public officer's right to salary is limited only to salaries which he has already earned or accrued for services rendered.[43] Other than that, a public officer does not have a vested right to salary and his compensation may be altered, decreased or discontinued, in the absence of a constitutional prohibition.[44]

If no vested right to salary generally pertains to a public officer, there is no cogent reason to support the claim to a right to future salary increase. The grant of any salary increase in the future is something that is merely anticipatory of a prospective benefit, something that is contingent on various factors. That is why it is a mere expectancy,[45] which does not give rise to a vested right.[46]

Furthermore, the measure undertaken by the President seeks to impose a moratorium only on increases which are not authorized by existing legislation sanctioning salary adjustments.

On the matter of the suspension of allowances and bonuses (which is already moot as it was expressly made effective until December 31, 2010 only),[47] its context shows that it was meant to arrest the questionable practice by members of the board of directors/trustees of GOCCs and GFIs granting numerous and excessive allowances, bonuses, incentives and other benefits to themselves. The President's action as Chief executive was simply a decisive response to Senate issued Resolution No. 17, s. 2010 urging him to act on the matter and an exercise of his control and oversight powers.

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[43] *Fisk v. Jefferson*, *supra* note 17.

[44] Mechem, Floyd, *A Treatise on the Law on Public Offices and Public Officers* (1890), p. 577.

[45] *House of Sara Lee v. Rey*, *supra* note 18.

[46] *Boncodin v. National Power Corporation Employees consolidated Union (NECU)*, *supra* note 20. *Equitable Banking Corporation (now known as Equitable-PCI Bank) v. Sadac*, G.R. No. 164772, 490 SCRA 380 (2006).

[47] As stated earlier, the suspension was extended until 31 January 2011 by EO 19 dated 30 December 2010. (See note 27.)

More importantly, there could have been no violation of substantive due process as petitioner, or anybody for that matter, cannot properly claim a right to receive bonuses. A bonus is not a demandable and enforceable obligation.[48] By definition, a "bonus" is a gratuity or act of liberality of the giver which **cannot be demanded as a matter of right by the recipient**.[49] It is something given in addition to what is ordinarily received by or strictly due to the recipient. The grant thereof is basically a management prerogative which cannot be forced upon the employer who may not be obliged to assume the onerous burden of granting bonuses or other benefits aside from the employee's basic salaries or wages, especially so if it is incapable of doing so.[50] Thus, there can be no oppression to speak of even if these privileges (bonuses, allowances and incentives) cease to be given. All the more reason should the President's judgment as Chief Executive be accorded respect if he directs the temporary stoppage of the grant of bonuses when he deems it to be prejudicial to public interest or too onerous because of the government's fiscal condition.

It is therefore clear that the suspension of the grant of bonuses and the imposition of a moratorium on salary increases under EO 7 do not deprive petitioner of any property right. As such, any declaration that such suspension or moratorium violates substantive due process cannot be justified.

Moreover, as already discussed, Section 59 of the General Provisions of RA 9970 and Section 56 of the General Provisions of RA 10147 expressly recognize the President's power to approve or disapprove "any grant of or increase in salaries, allowances, and other fringe benefits" in all RA 6758-exempt GOCCs and GFIs, including Philhealth. The power to approve

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[48] *Lepanto Ceramic, Inc. v. Lepanto Ceramics Employees Association*, 614 SCRA 63 (2010).

[49] *Manila Banking Corporation v. NLRC*, G.R. No. 107487. September 29, 1997.

[50] *Id.*

or disapprove covers the lesser power to suspend the grant of allowances and bonuses or impose a moratorium on salary increases.

All told, the act of the President as Chief Executive in issuing EO 7 was not oppressive, arbitrary, capricious or whimsical. No grave abuse of discretion may be imputed to the President. Thus, as the President's official act which enjoys the presumption of constitutionality and regularity, EO 7 should be accorded due respect and its validity sustained.

A FINAL WORD

Accountability of public office is a safeguard of representative democracy. All who serve in government must always be aware that they are exercising a public trust. They must bear in mind that public funds are scarce resources and should therefore be used prudently and judiciously. Hence, where there are findings that government funds are being wasted due to operational inefficiency and lack of fiscal responsibility in the executive departments, bureaus, offices or agencies, the President as Chief Executive should not be deprived of the authority to control, stop, check or at least manage the situation. Absent any showing of grave abuse of discretion on his part, the Court should recognize in the President as Chief Executive the power and duty to protect and promote public interest thru the rationalization of the compensation and position classification system in executive departments, bureaus, offices and agencies, including GOCCs and GFIs.

Accordingly, I vote that the petition be **DISMISSED**.

EN BANC

[G.R. No. 196271. February 28, 2012]

DATU MICHAEL ABAS KIDA, in his personal capacity, and in representation of MAGUINDANAO FEDERATION OF AUTONOMOUS IRRIGATORS ASSOCIATION, INC., HADJI MUHMINA J. USMAN, JOHN ANTHONY L. LIM, JAMILON T. ODIN, ASRIN TIMBOL JAIYARI, MUJIB M. KALANG, ALIH AL-SAIDI J. SAPI-E, KESSAR DAMSIE ABDIL, and BASSAM ALUH SAUPI, *petitioners, vs.* **SENATE OF THE PHILIPPINES, represented by its President JUAN PONCE ENRILE, HOUSE OF REPRESENTATIVES, thru SPEAKER FELICIANO BELMONTE, COMMISSION ON ELECTIONS, thru its Chairman, SIXTO BRILLANTES, JR., PAQUITO OCHOA, JR., Office of the President Executive Secretary, FLORENCIO ABAD, JR., Secretary of Budget, and ROBERTO TAN, Treasurer of the Philippines,** *respondents.*

[G.R. No. 196305. February 28, 2012]

BASARI D. MAPUPUNO, *petitioner, vs.* **SIXTO BRILLANTES, in his capacity as Chairman of the Commission on Elections, FLORENCIO ABAD, JR. in his capacity as Secretary of the Department of Budget and Management, PAQUITO OCHOA, JR., in his capacity as Executive Secretary, JUAN PONCE ENRILE, in his capacity as Senate President, and FELICIANO BELMONTE, in his capacity as Speaker of the House of Representatives,** *respondents.*

[G.R. No. 197221. February 28, 2012]

REP. EDCEL C. LAGMAN, *petitioner, vs.* **PAQUITO N. OCHOA, JR., in his capacity as the Executive Secretary, and the COMMISSION ON ELECTIONS,** *respondents.*

[G.R. No. 197280. February 28, 2012]

ALMARIM CENTI TILLAH, DATU CASAN CONDING CANA, and PARTIDO DEMOKRATIKO PILIPINO LAKAS NG BAYAN (PDP-LABAN), *petitioners, vs.* **THE COMMISSION ON ELECTIONS, through its Chairman, SIXTO BRILLANTES, JR., HON. PAQUITO N. OCHOA, JR., in his capacity as Executive Secretary, HON. FLORENCIO B. ABAD, JR., in his capacity as Secretary of the Department of Budget and Management, and HON. ROBERTO B. TAN, in his capacity as Treasurer of the Philippines,** *respondents.*

[G.R. No. 197282. February 28, 2012]

ATTY. ROMULO B. MACALINTAL, *petitioner, vs.* **COMMISSION ON ELECTIONS and THE OFFICE OF THE PRESIDENT, through EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.,** *respondents.*

[G.R. No. 197392. February 28, 2012]

LOUIS "BAROK" C. BIRAOGO, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR.,** *respondents.*

[G.R. No. 197454. February 28, 2012]

JACINTO V. PARAS, *petitioner, vs.* **EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., and the COMMISSION ON ELECTIONS,** *respondents.* **MINORITY RIGHTS FORUM, PHILIPPINES, INC.,** *respondents-intervenor.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT; AUTONOMOUS REGION IN MUSLIM MINDANAO (ARMM);

SYNCHRONIZATION MANDATE INCLUDES ARMM ELECTIONS; JUSTIFIED.— That the ARMM elections were not expressly mentioned in the Transitory Provisions of the Constitution on synchronization cannot be interpreted to mean that the ARMM elections are not covered by the constitutional mandate of synchronization. We have to consider that the ARMM, as we now know it, had not yet been officially organized at the time the Constitution was enacted and ratified by the people. Keeping in mind that a constitution is not intended to provide merely for the exigencies of a few years but is to endure through generations for as long as it remains unaltered by the people as ultimate sovereign, a constitution should be construed in the light of what actually is a **continuing instrument to govern** not only the present but also the unfolding events of the indefinite future. Although the principles embodied in a constitution remain fixed and unchanged from the time of its adoption, a constitution must be construed as a dynamic process intended to stand for a great length of time, to be progressive and not static. To reiterate, Article X of the Constitution, entitled "Local Government," clearly shows the intention of the Constitution to classify autonomous regions, such as the ARMM, as local governments. x x x The inclusion of autonomous regions in the enumeration of political subdivisions of the State under the heading "Local Government" indicates quite clearly the constitutional intent to consider autonomous regions as one of the forms of local governments. That the Constitution mentions only the "national government" and the "local governments," and does not make a distinction between the "local government" and the "regional government," is particularly revealing, betraying as it does the intention of the framers of the Constitution to consider the autonomous regions not as separate forms of government, but as political units which, while having more powers and attributes than other local government units, still remain under the category of local governments. Since autonomous regions are classified as local governments, it follows that elections held in autonomous regions are also considered as local elections. x x x In construing provisions of the Constitution, the first rule is *verba legis*, "that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed." Applying this principle to determine

the scope of "local elections," we refer to the meaning of the word "local," as understood in its ordinary sense. As defined in Webster's Third New International Dictionary Unabridged, "local" refers to something "that primarily serves the needs of a particular limited district, often a community or minor political subdivision." Obviously, the ARMM elections, which are held within the confines of the autonomous region of Muslim Mindanao, fall within this definition. To be sure, the fact that the ARMM possesses more powers than other provinces, cities, or municipalities is not enough reason to treat the ARMM regional elections differently from the other local elections. *Ubi lex non distinguit nec nos distinguire debemus.* When the law does not distinguish, we must not distinguish.

2. ID.; ID.; ID.; ONLY AMENDMENTS TO, OR REVISION OF, THE ORGANIC ACT CONSTITUTIONALLY-ESSENTIAL TO THE CREATION OF AUTONOMOUS REGIONS REQUIRE RATIFICATION THROUGH A PLEBISCITE; RATIONALE.— Section 18, Article X of the Constitution provides that "[t]he creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose[.]" We interpreted this to mean that only amendments to, or revisions of, the Organic Act constitutionally-essential to the creation of autonomous regions – *i.e.*, those aspects specifically mentioned in the Constitution which Congress must provide for in the Organic Act– require ratification through a plebiscite.
x x x While we agree with the petitioners' underlying premise that sovereignty ultimately resides with the people, we disagree that this legal reality necessitates compliance with the plebiscite requirement for **all** amendments to RA No. 9054. For if we were to go by the petitioners' interpretation of Section 18, Article X of the Constitution that all amendments to the Organic Act have to undergo the plebiscite requirement before becoming effective, this would lead to impractical and illogical results – hampering the ARMM's progress by impeding Congress from enacting laws that timely address problems as they arise in the region, as well as weighing down the ARMM government with the costs that unavoidably follow the holding of a plebiscite.

3. ID.; STATUTES; THE COURT MAY NOT, IN THE GUISE OF INTERPRETATION, ENLARGE THE SCOPE OF A

STATUTE AND INCLUDE THEREIN SITUATIONS NOT PROVIDED NOR INTENDED BY THE LAWMAKERS; APPLICATION IN CASE AT BAR.— Well-settled is the rule that the court may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of enactment, whether careless or calculated, cannot be judicially supplied however later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention had been called to the omission. Providing for lapses within the law falls within the exclusive domain of the legislature, and courts, no matter how well-meaning, have no authority to intrude into this clearly delineated space. x x x A thorough reading of RA No. 9054 reveals that it fixes the schedule for only the ***first*** ARMM elections; it does not provide the date for the succeeding regular ARMM elections. In providing for the date of the regular ARMM elections, RA No. 9333 and RA No. 10153 clearly do not amend RA No. 9054 since these laws do not change or revise any provision in RA No. 9054. In fixing the date of the ARMM elections subsequent to the first election, RA No. 9333 and RA No. 10153 merely filled the gap left in RA No. 9054.

4. ID.; LEGISLATIVE DEPARTMENT; CONGRESS; LAW-MAKING POWER; ONE CONGRESS CANNOT LIMIT OR REDUCE THE PLENARY POWER OF SUCCEEDING CONGRESSES BY REQUIRING A HIGHER VOTE THRESHOLD THAN WHAT THE CONSTITUTION REQUIRES.— The power of the legislature to make laws includes the power to amend and repeal these laws. Where the legislature, by its own act, attempts to limit its power to amend or repeal laws, the Court has the duty to strike down such act for interfering with the plenary powers of Congress. x x x Under our Constitution, each House of Congress has the power to approve bills by a mere majority vote, provided there is quorum. In requiring all laws which amend RA No. 9054 to comply with a higher voting requirement than the Constitution provides (2/3 vote), Congress, which enacted RA No. 9054, clearly violated the very principle which we sought to establish in *Duarte*. To reiterate, the act of one legislature is not binding upon, and cannot tie the hands of, future legislatures. x x x

One Congress cannot limit or reduce the plenary legislative power of succeeding Congresses by requiring a higher vote threshold than what the Constitution requires to enact, amend or repeal laws. **No law can be passed fixing such a higher vote threshold because Congress has no power, by ordinary legislation, to amend the Constitution**."

5. ID.; ID.; ID.; HOLDOVER RULE; WHEN ALLOWED; THE RULE ON HOLDOVER CAN ONLY APPLY AS AN AVAILABLE OPTION WHERE NO EXPRESS OR IMPLIED LEGISLATIVE INTENT TO THE CONTRARY EXISTS; PRESENT IN CASE AT BAR.— The clear wording of Section 8, Article X of the Constitution expresses the intent of the framers of the Constitution to categorically set a limitation on the period within which all elective local officials can occupy their offices. We have already established that elective ARMM officials are also local officials; they are, thus, bound by the three-year term limit prescribed by the Constitution. It, therefore, becomes irrelevant that the Constitution does not expressly prohibit elective officials from acting in a holdover capacity. **Short of amending the Constitution, Congress has no authority to extend the three-year term limit by inserting a holdover provision in RA No. 9054**. Thus, the term of three years for local officials should stay at three (3) years, as fixed by the Constitution, and cannot be extended by holdover by Congress. Admittedly, we have, in the past, recognized the validity of holdover provisions in various laws. One significant difference between the present case and these past cases is that while these past cases all refer to elective *barangay* or *sangguniang kabataan* officials whose terms of office are not explicitly provided for in the Constitution, the present case refers to local elective officials – the ARMM Governor, the ARMM Vice Governor, and the members of the Regional Legislative Assembly – whose terms fall within the three-year term limit set by Section 8, Article X of the Constitution. Even assuming that a holdover is constitutionally permissible, and there had been statutory basis for it (namely Section 7, Article VII of RA No. 9054), the rule of holdover can only apply as an available option where no express or implied legislative intent to the contrary exists; it cannot apply where such contrary intent is evident. Congress, in passing RA No. 10153 and removing the holdover option, has made it

clear that it wants to suppress the holdover rule expressed in RA No. 9054. Congress, in the exercise of its plenary legislative powers, has clearly acted within its discretion when it deleted the holdover option, and this Court has no authority to question the wisdom of this decision, absent any evidence of unconstitutionality or grave abuse of discretion. It is for the legislature and the executive, and not this Court, to decide how to fill the vacancies in the ARMM regional government which arise from the legislature complying with the constitutional mandate of synchronization.

6. ID.; EXECUTIVE DEPARTMENT; PRESIDENT; APPOINTING POWER; CLASSIFICATION OF PRESIDENTIAL APPOINTMENTS; CLARIFIED.— The power to appoint has traditionally been recognized as executive in nature. Section 16, Article VII of the Constitution describes in broad strokes the extent of this power. x x x The main distinction between the provision in the 1987 Constitution and its counterpart in the 1935 Constitution is the sentence construction. x x x The change in style is significant; in providing for this change, the framers of the 1987 Constitution clearly sought to make a distinction between the first group of presidential appointments and the second group of presidential appointments. x x x The first group of presidential appointments, specified as the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the Armed Forces, and other officers whose appointments are vested in the President by the Constitution, pertains to the appointive officials who have to be confirmed by the Commission on Appointments. The second group of officials the President can appoint are "all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint." The second sentence acts as the "catch-all provision" for the President's appointment power, in recognition of the fact that the power to appoint is essentially executive in nature. The wide latitude given to the President to appoint is further demonstrated by the recognition of the President's power to appoint officials ***whose appointments are not even provided for by law***. In other words, where there are offices which have to be filled, but the law does not provide the process for filling them, the Constitution recognizes the power of the President to fill the office by appointment.

7. ID.; ID.; ID.; ID.; PRESIDENTIAL POWER TO APPOINT OFFICERS-IN-CHARGE IN THE ARMM, SUSTAINED.— Any limitation on or qualification to the exercise of the President's appointment power should be strictly construed and must be clearly stated in order to be recognized. Given that the President derives his power to appoint OICs in the ARMM regional government from law, it falls under the classification of presidential appointments covered by the second sentence of Section 16, Article VII of the Constitution; the President's appointment power thus rests on clear constitutional basis. x x x There is no incompatibility between the President's power of supervision over local governments and autonomous regions, and the power granted to the President, within the specific confines of RA No. 10153, to appoint OICs. The power of supervision is defined as "the power of a superior officer to see to it that lower officers perform their functions in accordance with law." This is distinguished from the power of control or "the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for the latter." The petitioners' apprehension regarding the President's alleged power of control over the OICs is rooted in their belief that the President's appointment power includes the power to remove these officials at will. In this way, the petitioners foresee that the appointed OICs will be beholden to the President, and act as representatives of the President and not of the people. Section 3 of RA No. 10153 expressly contradicts the petitioners' supposition. x x x The wording of the law is clear. Once the President has appointed the OICs for the offices of the Governor, Vice Governor and members of the Regional Legislative Assembly, these same officials will remain in office until they are replaced by the duly elected officials in the May 2013 elections. Nothing in this provision even hints that the President has the power to recall the appointments he already made. Clearly, the petitioners' fears in this regard are more apparent than real. x x x RA No. 10153 was passed in order to synchronize the ARMM elections with the national and local elections. In the course of synchronizing the ARMM elections with the national and local elections, Congress had to grant the President the power to appoint OICs in the ARMM, in light

of the fact that: (a) holdover by the incumbent ARMM elective officials is legally impermissible; and (b) Congress cannot call for special elections and shorten the terms of elective local officials for less than three years. Unlike local officials, as the Constitution does not prescribe a term limit for *barangay* and *Sangguniang Kabataan* officials, there is no legal proscription which prevents these specific government officials from continuing in a holdover capacity should some exigency require the postponement of *barangay* or *Sangguniang Kabataan* elections.

8. ID.; JUDICIAL DEPARTMENT; PRINCIPLE OF JUDICIAL COURTESY, EXPLAINED; THE PRINCIPLE CANNOT BE APPLIED TO THE DECISION OF THE PRESIDENT IN REGARD TO THE PRINCIPLE OF SEPARATION OF POWERS; CASE AT BAR.— [T]he principle of judicial courtesy is based on the hierarchy of courts and applies only to lower courts in instances where, even if there is no writ of preliminary injunction or TRO issued by a higher court, it would be proper for a lower court to suspend its proceedings for practical and ethical considerations. In other words, the principle of "judicial courtesy" applies where there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court or court of origin. Consequently, this principle cannot be applied to the President, who represents a co-equal branch of government. To suggest otherwise would be to disregard the principle of separation of powers, on which our whole system of government is founded upon. x x x Regardless of how close the voting is, so long as there is concurrence of the majority of the members of the *en banc* who actually took part in the deliberations of the case, a decision garnering only 8 votes out of 15 members is still a decision of the Supreme Court *en banc* and must be respected as such. The petitioners are, therefore, not in any position to speculate that, based on the voting, "the probability exists that their motion for reconsideration may be granted."

APPEARANCES OF COUNSEL

Agabin Versola & Layaoen Law Offices for petitioners in G.R. Nos. 196271 & 196305.

Lagman Lagman and Mones Law Firm for petitioner in G.R. No. 197221.

Aquilino Q. Pimentel for petitioners in G.R. No. 197280.

Senate Legal Counsel for Senate President Juan Ponce Enrile.

Edgardo Carlo L. Vistan for petitioner in G.R. No. 197282.

Jacinto V. Paras for and on his behalf in G.R. No. 197454.

Leonardo B. Palicte III for Speaker Feliciano R. Belmonte.

Musa Malayang and Associates for Bangsamoro Solidarity Movement.

Louis C. Biraogo for and on his behalf in G.R. No. 197392.

R E S O L U T I O N

BRION, *J.*:

We resolve: (a) the motion for reconsideration filed by petitioners Datu Michael Abas Kida, *et al.* in G.R. No. 196271; (b) the motion for reconsideration filed by petitioner Rep. Edcel Lagman in G.R. No. 197221; (c) the *ex abundante ad cautelam* motion for reconsideration filed by petitioner Basari Mapupuno in G.R. No. 196305; (d) the motion for reconsideration filed by petitioner Atty. Romulo Macalintal in G.R. No. 197282; (e) the motion for reconsideration filed by petitioners Almarim Centi Tillah, Datu Casan Conding Cana and Partido Demokratiko Pilipino Lakas ng Bayan in G.R. No. 197280; (f) the manifestation and motion filed by petitioners Almarim Centi Tillah, *et al.* in G.R. No. 197280; and (g) the very urgent motion to issue clarificatory resolution that the temporary restraining order (*TRO*) is still existing and effective.

These motions assail our Decision dated October 18, 2011, where we upheld the constitutionality of Republic Act (RA) No. 10153. Pursuant to the constitutional mandate of synchronization, RA No. 10153 postponed the regional elections in the Autonomous Region in Muslim Mindanao (*ARMM*) (which were scheduled to be held on the second Monday of August 2011) to the second Monday of May 2013 and recognized the President's power to appoint officers-in-charge (*OICs*) to

temporarily assume these positions upon the expiration of the terms of the elected officials.

The Motions for Reconsideration

The petitioners in G.R. No. 196271 raise the following grounds in support of their motion:

I. THE HONORABLE COURT ERRED IN CONCLUDING THAT THE ARMM ELECTIONS ARE LOCAL ELECTIONS, CONSIDERING THAT THE CONSTITUTION GIVES THE ARMM A SPECIAL STATUS AND IS SEPARATE AND DISTINCT FROM ORDINARY LOCAL GOVERNMENT UNITS.

II. R.A. 10153 AND R.A. 9333 AMEND THE ORGANIC ACT.

III. THE SUPERMAJORITY PROVISIONS OF THE ORGANIC ACT (R.A. 9054) ARE NOT IRREPEALABLE LAWS.

IV. SECTION 3, ARTICLE XVII OF R.A. 9054 DOES NOT VIOLATE SECTION 18, ARTICLE X OF THE CONSTITUTION.

V. BALANCE OF INTERESTS TILT IN FAVOR OF THE DEMOCRATIC PRINCIPLE[.][1]

The petitioner in G.R. No. 197221 raises similar grounds, arguing that:

I. THE ELECTIVE REGIONAL EXECUTIVE AND LEGISLATIVE OFFICIALS OF ARMM CANNOT BE CONSIDERED AS OR EQUATED WITH THE TRADITIONAL LOCAL GOVERNMENT OFFICIALS IN THE LOCAL GOVERNMENT UNITS (LGUs) BECAUSE (A) THERE IS NO EXPLICIT CONSTITUTIONAL PROVISION ON SUCH PARITY; AND (B) THE ARMM IS MORE SUPERIOR THAN LGUs IN STRUCTURE, POWERS AND AUTONOMY, AND CONSEQUENTLY IS A CLASS OF ITS OWN APART FROM TRADITIONAL LGUs.

II. THE UNMISTAKABLE AND UNEQUIVOCAL CONSTITUTIONAL MANDATE FOR AN ELECTIVE AND REPRESENTATIVE EXECUTIVE DEPARTMENT AND

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[1] *Rollo*, G.R. No. 196271, p. 1221.

LEGISLATIVE ASSEMBLY IN ARMM INDUBITABLY PRECLUDES THE APPOINTMENT BY THE PRESIDENT OF OFFICERS-IN-CHARGE (OICs), ALBEIT MOMENTARY OR TEMPORARY, FOR THE POSITIONS OF ARMM GOVERNOR, VICE GOVERNOR AND MEMBERS OF THE REGIONAL ASSEMBLY.

III. THE PRESIDENT'S APPOINTING POWER IS LIMITED TO APPOINTIVE OFFICIALS AND DOES NOT EXTEND TO ELECTIVE OFFICIALS EVEN AS THE PRESIDENT IS ONLY VESTED WITH SUPERVISORY POWERS OVER THE ARMM, THEREBY NEGATING THE AWESOME POWER TO APPOINT AND REMOVE OICs OCCUPYING ELECTIVE POSITIONS.

IV. THE CONSTITUTION DOES NOT PROSCRIBE THE HOLDOVER OF ARMM ELECTED OFFICIALS PENDING THE ELECTION AND QUALIFICATION OF THEIR SUCCESSORS.

V. THE RULING IN *OSMENA* DOES NOT APPLY TO ARMM ELECTED OFFICIALS WHOSE TERMS OF OFFICE ARE NOT PROVIDED FOR BY THE CONSTITUTION BUT PRESCRIBED BY THE ORGANIC ACTS.

VI. THE REQUIREMENT OF A SUPERMAJORITY OF ¾ VOTES IN THE HOUSE OF REPRESENTATIVES AND THE SENATE FOR THE VALIDITY OF A SUBSTANTIVE AMENDMENT OR REVISION OF THE ORGANIC ACTS DOES NOT IMPOSE AN IRREPEALABLE LAW.

VII. THE REQUIREMENT OF A PLEBISCITE FOR THE EFFECTIVITY OF A SUBSTANTIVE AMENDMENT OR REVISION OF THE ORGANIC ACTS DOES NOT UNDULY EXPAND THE PLEBISCITE REQUIREMENT OF THE CONSTITUTION.

VIII. SYNCHRONIZATION OF THE ARMM ELECTION WITH THE NATIONAL AND LOCAL ELECTIONS IS NOT MANDATED BY THE CONSTITUTION.

IX. THE COMELEC HAS THE AUTHORITY TO HOLD AND CONDUCT SPECIAL ELECTIONS IN ARMM, AND THE ENACTMENT OF AN IMPROVIDENT AND UNCONSTITUTIONAL STATUTE IS AN ANALOGOUS

CAUSE WARRANTING COMELEC'S HOLDING OF SPECIAL ELECTIONS.[2] (italics supplied)

The petitioner in G.R. No. 196305 further asserts that:

I. BEFORE THE COURT MAY CONSTRUE OR INTERPRET A STATUTE, IT IS A CONDITION *SINE QUA NON* THAT THERE BE DOUBT OR AMBIGUITY IN ITS LANGUAGE.

THE TRANSITORY PROVISIONS HOWEVER ARE CLEAR AND UNAMBIGUOUS: THEY REFER TO THE 1992 ELECTIONS AND TURN-OVER OF ELECTIVE OFFICIALS. IN THUS RECOGNIZING A SUPPOSED "INTENT" OF THE FRAMERS, AND APPLYING THE SAME TO ELECTIONS 20 YEARS AFTER, THE HONORABLE SUPREME COURT MAY HAVE VIOLATED THE FOREMOST RULE IN STATUTORY CONSTRUCTION.

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II. THE HONORABLE COURT SHOULD HAVE CONSIDERED THAT RA 9054, AN ORGANIC ACT, WAS COMPLETE IN ITSELF. HENCE, RA 10153 SHOULD BE CONSIDERED TO HAVE BEEN ENACTED PRECISELY TO AMEND RA 9054.

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III. THE HONORABLE COURT MAY HAVE COMMITTED A SERIOUS ERROR IN DECLARING THE 2/3 VOTING REQUIREMENT SET FORTH IN RA 9054 AS UNCONSTITUTIONAL.

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IV. THE HONORABLE COURT MAY HAVE COMMITTED A SERIOUS ERROR IN HOLDING THAT A PLEBISCITE IS NOT NECESSARY IN AMENDING THE ORGANIC ACT.

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V. THE HONORABLE COURT COMMITTED A SERIOUS ERROR IN DECLARING THE HOLD-OVER OF ARMM ELECTIVE OFFICIALS UNCONSTITUTIONAL.

x x x x x x x x x

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[2] *Id.* at 1261-1263.

VI. THE HONORABLE COURT COMMITTED A SERIOUS ERROR IN UPHOLDING THE APPOINTMENT OF OFFICERS-IN-CHARGE.[3] (italics and underscoring supplied)

The petitioner in G.R. No. 197282 contends that:

A.

ASSUMING WITHOUT CONCEDING THAT THE APPOINTMENT OF OICs FOR THE REGIONAL GOVERNMENT OF THE ARMM IS NOT UNCONSTITUTIONAL TO BEGIN WITH, SUCH APPOINTMENT OF OIC REGIONAL OFFICIALS WILL CREATE A FUNDAMENTAL CHANGE IN THE BASIC STRUCTURE OF THE REGIONAL GOVERNMENT SUCH THAT R.A. NO. 10153 SHOULD HAVE BEEN SUBMITTED TO A PLEBISCITE IN THE ARMM FOR APPROVAL BY ITS PEOPLE, WHICH PLEBISCITE REQUIREMENT CANNOT BE CIRCUMVENTED BY SIMPLY CHARACTERIZING THE PROVISIONS OF R.A. NO. 10153 ON APPOINTMENT OF OICs AS AN "INTERIM MEASURE".

B.

THE HONORABLE COURT ERRED IN RULING THAT THE APPOINTMENT BY THE PRESIDENT OF OICs FOR THE ARMM REGIONAL GOVERNMENT IS NOT VIOLATIVE OF THE CONSTITUTION.

C.

THE HOLDOVER PRINCIPLE ADOPTED IN R.A. NO. 9054 DOES NOT VIOLATE THE CONSTITUTION, AND BEFORE THEIR SUCCESSORS ARE ELECTED IN EITHER AN ELECTION TO BE HELD AT THE SOONEST POSSIBLE TIME OR IN MAY 2013, THE SAID INCUMBENT ARMM REGIONAL OFFICIALS MAY VALIDLY CONTINUE FUNCTIONING AS SUCH IN A HOLDOVER CAPACITY IN ACCORDANCE WITH SECTION 7, ARTICLE VII OF R.A. NO. 9054.

D.

WITH THE CANCELLATION OF THE AUGUST 2011 ARMM ELECTIONS, SPECIAL ELECTIONS MUST IMMEDIATELY BE HELD FOR THE ELECTIVE REGIONAL OFFICIALS OF THE ARMM

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[3] *Id.* at 1345-1383.

WHO SHALL SERVE UNTIL THEIR SUCCESSORS ARE ELECTED IN THE MAY 2013 SYNCHRONIZED ELECTIONS.[4]

Finally, the petitioners in G.R. No. 197280 argue that:

a) the Constitutional mandate of synchronization does not apply to the ARMM elections;

b) RA No. 10153 negates the basic principle of republican democracy which, by constitutional mandate, guides the governance of the Republic;

c) RA No. 10153 amends the Organic Act (RA No. 9054) and, thus, has to comply with the 2/3 vote from the House of Representatives and the Senate, voting separately, and be ratified in a plebiscite;

d) if the choice is between elective officials continuing to hold their offices even after their terms are over and non-elective individuals getting into the vacant elective positions by appointment as OICs, the holdover option is the better choice;

e) the President only has the power of supervision over autonomous regions, which does not include the power to appoint OICs to take the place of ARMM elective officials; and

f) it would be better to hold the ARMM elections separately from the national and local elections as this will make it easier for the authorities to implement election laws.

In essence, the Court is asked to resolve the following questions:

(a) Does the Constitution mandate the synchronization of ARMM regional elections with national and local elections?

(b) Does RA No. 10153 amend RA No. 9054? If so, does RA No. 10153 have to comply with the supermajority vote and plebiscite requirements?

(c) Is the holdover provision in RA No. 9054 constitutional?

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[4] *Id.* at 1174-1175.

(d) Does the COMELEC have the power to call for special elections in ARMM?

(e) Does granting the President the power to appoint OICs violate the elective and representative nature of ARMM regional legislative and executive offices?

(f) Does the appointment power granted to the President exceed the President's supervisory powers over autonomous regions?

The Court's Ruling

We deny the motions for lack of merit.

Synchronization mandate includes ARMM elections

The Court was unanimous in holding that the Constitution mandates the synchronization of national and local elections. While the Constitution does not expressly instruct Congress to synchronize the national and local elections, the intention can be inferred from the following provisions of the Transitory Provisions (Article XVIII) of the Constitution, which state:

Section 1. The first elections of Members of the Congress under this Constitution shall be held on the second Monday of May, 1987.

The first local elections shall be held on a date to be determined by the President, which may be simultaneous with the election of the Members of the Congress. It shall include the election of all Members of the city or municipal councils in the Metropolitan Manila area.

Section 2. The Senators, Members of the House of Representatives, and the local officials first elected under this Constitution shall serve until noon of June 30, 1992.

Of the Senators elected in the elections in 1992, the first twelve obtaining the highest number of votes shall serve for six years and the remaining twelve for three years.

x x x x x x x x x

Section 5. The six-year term of the incumbent President and Vice-President elected in the February 7, 1986 election is, for purposes of synchronization of elections, hereby extended to noon of June 30, 1992.

The first regular elections for the President and Vice-President under this Constitution shall be held on the second Monday of May, 1992.

To fully appreciate the constitutional intent behind these provisions, we refer to the discussions of the Constitutional Commission:

MR. MAAMBONG. For purposes of identification, I will now read a section which we will temporarily indicate as Section 14. It reads: "THE SENATORS, MEMBERS OF THE HOUSE OF REPRESENTATIVES AND THE LOCAL OFFICIALS ELECTED IN THE FIRST ELECTION SHALL SERVE FOR FIVE YEARS, TO EXPIRE AT NOON OF JUNE 1992."

This was presented by Commissioner Davide, so may we ask that Commissioner Davide be recognized.

THE PRESIDING OFFICER (Mr. Rodrigo). Commissioner Davide is recognized.

MR. DAVIDE. Before going to the proposed amendment, I would only state that in view of the action taken by the Commission on Section 2 earlier, I am formulating a new proposal. It will read as follows: "THE SENATORS, MEMBERS OF THE HOUSE OF REPRESENTATIVES AND THE LOCAL OFFICIALS FIRST ELECTED UNDER THIS CONSTITUTION SHALL SERVE UNTIL NOON OF JUNE 30, 1992."

I proposed this because of the proposed section of the Article on Transitory Provisions giving a term to the incumbent President and Vice-President until 1992. Necessarily then, since the term provided by the Commission for Members of the Lower House and for local officials is three years, if there will be an election in 1987, the next election for said officers will be in 1990, and it would be very close to 1992. We could never attain, subsequently, any synchronization of election which is once every three years.

So under my proposal we will be able to begin actual synchronization in 1992, and consequently, we should not have a local election or an election for Members of the Lower House in 1990 for them to be able to complete their term of three years each. And if we also stagger the Senate, upon the first election it will result in an election in 1993 for the Senate alone, and there will be an election for 12 Senators in 1990. But for the remaining 12 who will be elected in 1987, if their term is for six years, their election will be in 1993. So, consequently we will have elections in 1990, in 1992 and in 1993. The later election will be limited to only 12 Senators and of course to the local officials and the Members of the Lower House. But, definitely, thereafter we can never have an election once every three years, therefore defeating the very purpose of the Commission when we adopted the term of six years for the President and another six years for the Senators with the possibility of staggering with 12 to serve for six years and 12 for three years insofar as the first Senators are concerned. **And so my proposal is the only way to effect the first synchronized election which would mean, necessarily, a bonus of two years to the Members of the Lower House and a bonus of two years to the local elective officials.**

THE PRESIDING OFFICER (Mr. Rodrigo). What does the committee say?

MR. DE CASTRO. Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. Rodrigo). Commissioner de Castro is recognized.

MR. DE CASTRO. Thank you.

During the discussion on the legislative and the synchronization of elections, I was the one who proposed that in order to synchronize the elections every three years, which the body approved — the first national and local officials to be elected in 1987 shall continue in office for five years, the same thing the Honorable Davide is now proposing. That means they will all serve until 1992, assuming that the term of the President will be for six years and continue beginning in 1986. So from 1992, we will again have national, local and presidential elections. **This time, in 1992, the President shall have a term until 1998 and the first 12 Senators will serve until 1998, while the next 12 shall serve until 1995, and then the local officials elected in 1992 will serve until 1995. From then on, we shall have an election every three years.**

So, I will say that the proposition of Commissioner Davide is in order, if we have to synchronize our elections every three years which was already approved by the body.

Thank you, Mr. Presiding Officer.

x x x x x x x x x

MR. GUINGONA. What will be synchronized, therefore, is the election of the incumbent President and Vice-President in 1992.

MR. DAVIDE. Yes.

MR. GUINGONA. Not the reverse. Will the committee not synchronize the election of the Senators and local officials with the election of the President?

MR. DAVIDE. It works both ways, Mr. Presiding Officer. The attempt here is on the assumption that the provision of the Transitory Provisions on the term of the incumbent President and Vice-President would really end in 1992.

MR. GUINGONA. Yes.

MR. DAVIDE. **In other words, there will be a single election in 1992 for all, from the President up to the municipal officials.**[5] (emphases and underscoring ours)

The framers of the Constitution could not have expressed their objective more clearly – there was to be a single election in 1992 for all elective officials – from the President down to the municipal officials. Significantly, the framers were even willing to temporarily lengthen or shorten the terms of elective officials in order to meet this objective, highlighting the importance of this constitutional mandate.

We came to the same conclusion in *Osmeña v. Commission on Elections*,[6] where we unequivocally stated that "the Constitution has mandated synchronized national and local

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[5] V Record of the Constitutional Commission, October 3, 1986, pp. 429-431.

[6] G.R. Nos. 100318, 100308, 100417, and 100420, July 30, 1991, 199 SCRA 750.

elections."[7] Despite the length and verbosity of their motions, the petitioners have failed to convince us to deviate from this established ruling.

Neither do we find any merit in the petitioners' contention that the ARMM elections are not covered by the constitutional mandate of synchronization because the ARMM elections were not specifically mentioned in the above-quoted Transitory Provisions of the Constitution.

That the ARMM elections were not expressly mentioned in the Transitory Provisions of the Constitution on synchronization cannot be interpreted to mean that the ARMM elections are not covered by the constitutional mandate of synchronization. We have to consider that the ARMM, as we now know it, had not yet been officially organized at the time the Constitution was enacted and ratified by the people. Keeping in mind that a constitution is not intended to provide merely for the exigencies of a few years but is to endure through generations for as long as it remains unaltered by the people as ultimate sovereign, a constitution should be construed in the light of what actually is a **continuing instrument to govern** not only the present but also the unfolding events of the indefinite future. Although the principles embodied in a constitution remain fixed and unchanged from the time of its adoption, a constitution must be construed as a dynamic process intended to stand for a great length of time, to be progressive and not static.[8]

To reiterate, Article X of the Constitution, entitled "Local Government," clearly shows the intention of the Constitution to classify autonomous regions, such as the ARMM, as local governments. We refer to Section 1 of this Article, which provides:

Section 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and

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[7] *Id.* at 762.

[8] See Ruben, *STATUTORY CONSTRUCTION*, 5th ed., 2003, p. 435, citing *Roman Cath. Apostolic Adm. of Davao, Inc. v. Land Reg. Com., et al.*, 102 Phil. 596 (1957).

barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

The inclusion of autonomous regions in the enumeration of political subdivisions of the State under the heading "Local Government" indicates quite clearly the constitutional intent to consider autonomous regions as one of the forms of local governments.

That the Constitution mentions only the "national government" and the "local governments," and does not make a distinction between the "local government" and the "regional government," is particularly revealing, betraying as it does the intention of the framers of the Constitution to consider the autonomous regions not as separate forms of government, but as political units which, while having more powers and attributes than other local government units, still remain under the category of local governments. Since autonomous regions are classified as local governments, it follows that elections held in autonomous regions are also considered as local elections.

The petitioners further argue that even assuming that the Constitution mandates the synchronization of elections, the ARMM elections are not covered by this mandate since they are regional elections and not local elections.

In construing provisions of the Constitution, the first rule is *verba legis*, "that is, wherever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed."[9] Applying this principle to determine the scope of "local elections," we refer to the meaning of the word "local," as understood in its ordinary sense. As defined in Webster's Third New International Dictionary Unabridged, "local" refers to something "that primarily serves the needs of a particular limited district, often a community or minor political subdivision." Obviously, the ARMM elections, which are held within the confines of the autonomous region of Muslim Mindanao, fall within this definition.

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[9] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 884 (2003).

To be sure, the fact that the ARMM possesses more powers than other provinces, cities, or municipalities is not enough reason to treat the ARMM regional elections differently from the other local elections. *Ubi lex non distinguit nec nos distinguire debemus.* When the law does not distinguish, we must not distinguish.[10]

RA No. 10153 does not amend RA No. 9054

The petitioners are adamant that the provisions of RA No. 10153, in postponing the ARMM elections, amend RA No. 9054.

We cannot agree with their position.

A thorough reading of RA No. 9054 reveals that it fixes the schedule for only the ***first*** ARMM elections;[11] it does not provide the date for the succeeding regular ARMM elections. In providing for the date of the regular ARMM elections, RA No. 9333 and RA No. 10153 clearly do not amend RA No. 9054 since these laws do not change or revise any provision in RA No. 9054. In fixing the date of the ARMM elections subsequent to the first election, RA No. 9333 and RA No. 10153 merely filled the gap left in RA No. 9054.

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[10] *Amores v. House of Representatives Electoral Tribunal*, G.R. No. 189600, June 29, 2010, 622 SCRA 593, citing *Adasa v. Abalos*, G.R. No. 168617, February 19, 2007, 516 SCRA 261, 280, and *Philippine Free Press, Inc. v. Court of Appeals*, 510 Phil. 411, 433 (2005).

[11] Section 7, Article XVIII of RA No. 9054 provides:

Section 7. First Regular Elections. — The first regular elections of the Regional Governor, Regional Vice Governor and members of the regional legislative assembly under this Organic Act shall be held on the second Monday of September 2001. The Commission on Elections shall promulgate rules and regulations as may be necessary for the conduct of said election.

The election of the Regional Governor, Regional Vice Governor, and members of the Regional Legislative Assembly of the Autonomous Region In Muslim Mindanao (ARMM) set forth in Republic Act No. 8953 is hereby reset accordingly.

The funds for the holding of the ARMM elections shall be taken from the savings of the national government or shall be provided in the General Appropriations Act (GAA).

We reiterate our previous observations:

> This view – that Congress thought it best to leave the determination of the date of succeeding ARMM elections to legislative discretion – finds support in ARMM's recent history.
>
> To recall, RA No. 10153 is not the first law passed that rescheduled the ARMM elections. The First Organic Act – RA No. 6734 – not only did not fix the date of the subsequent elections; it did not even fix the specific date of the first ARMM elections, leaving the date to be fixed in another legislative enactment. Consequently, RA No. 7647, RA No. 8176, RA No. 8746, RA No. 8753, and RA No. 9012 were all enacted by Congress to fix the dates of the ARMM elections. Since these laws did not change or modify any part or provision of RA No. 6734, they were not amendments to this latter law. Consequently, there was no need to submit them to any plebiscite for ratification.
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> The Second Organic Act – **RA No. 9054** – which lapsed into law on March 31, 2001, provided that the first elections would be held on the second Monday of September 2001. Thereafter, Congress passed RA No. 9140 to reset the date of the ARMM elections. Significantly, while RA No. 9140 also scheduled the plebiscite for the ratification of the Second Organic Act (RA No. 9054), **the new date of the ARMM regional elections fixed in RA No. 9140 was not among the provisions ratified in the plebiscite held to approve RA No. 9054**. Thereafter, Congress passed RA No. 9333, which further reset the date of the ARMM regional elections. Again, this law was not ratified through a plebiscite.
>
> From these legislative actions, we see the clear intention of Congress to treat the laws which fix the date of the subsequent ARMM elections as separate and distinct from the Organic Acts. Congress only acted consistently with this intent when it passed RA No. 10153 without requiring compliance with the amendment prerequisites embodied in Section 1 and Section 3, Article XVII of RA No. 9054.[12] (emphases supplied)

The petitioner in G.R. No. 196305 contends, however, that there is no lacuna in RA No. 9054 as regards the date of the subsequent ARMM elections. In his estimation, it can be

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[12] *Rollo*, G.R. No. 196271, pp. 1035-1037.

implied from the provisions of RA No. 9054 that the succeeding elections are to be held three years after the date of the first ARMM regional elections.

We find this an erroneous assertion. Well-settled is the rule that the court may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of enactment, whether careless or calculated, cannot be judicially supplied however later wisdom may recommend the inclusion.[13] Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention had been called to the omission.[14] Providing for lapses within the law falls within the exclusive domain of the legislature, and courts, no matter how well-meaning, have no authority to intrude into this clearly delineated space.

Since RA No. 10153 does not amend, but merely fills in the gap in RA No. 9054, there is no need for RA No. 10153 to comply with the amendment requirements set forth in Article XVII of RA No. 9054.

Supermajority vote requirement makes RA No. 9054 an irrepealable law

Even assuming that RA No. 10153 amends RA No. 9054, however, we have already established that the supermajority vote requirement set forth in Section 1, Article XVII of RA No. 9054[15] is unconstitutional for violating the principle that Congress cannot pass irrepealable laws.

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[13] Ruben, *supra* note 8, at 74, citing *Morales v. Subido, etc.*, 135 Phil. 346 (1968).

[14] *Id.*, citing *People v. Garcia*, 85 Phil. 651 (1950).

[15] Section 1, Article XVII of RA No. 9054 provides: "Consistent with the provisions of the Constitution, this Organic Act may be re-amended or revised by the Congress of the Philippines upon a vote of two-thirds (2/3) of the Members of the House of Representatives and of the Senate voting separately."

The power of the legislature to make laws includes the power to amend and repeal these laws. Where the legislature, by its own act, attempts to limit its power to amend or repeal laws, the Court has the duty to strike down such act for interfering with the plenary powers of Congress. As we explained in *Duarte v. Dade*:[16]

> A state legislature has a plenary law-making power over all subjects, whether pertaining to persons or things, within its territorial jurisdiction, either to introduce new laws or repeal the old, unless prohibited expressly or by implication by the federal constitution or limited or restrained by its own. It cannot bind itself or its successors by enacting irrepealable laws except when so restrained. Every legislative body may modify or abolish the acts passed by itself or its predecessors. This power of repeal may be exercised at the same session at which the original act was passed; and even while a bill is in its progress and before it becomes a law. **This legislature cannot bind a future legislature to a particular mode of repeal. It cannot declare in advance the intent of subsequent legislatures or the effect of subsequent legislation upon existing statutes**. [emphasis ours]

Under our Constitution, each House of Congress has the power to approve bills by a mere majority vote, provided there is quorum.[17] In requiring all laws which amend RA No. 9054 to comply with a higher voting requirement than the Constitution provides (2/3 vote), Congress, which enacted RA No. 9054, clearly violated the very principle which we sought to establish in *Duarte*. To reiterate, the act of one legislature is not binding upon, and cannot tie the hands of, future legislatures.[18]

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[16] 32 Phil. 36, 49 (1915), citing Lewis' Southernland on Statutory Construction, section 244.

[17] CONSTITUTION, Article VI, Section 16(2) states: "A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner, and under such penalties, as such House may provide."

[18] See *The City of Davao v. The Regional Trial Court, Branch XII, Davao City*, 504 Phil. 543 (2005), citing 59 C.J., sec. 500, pp. 899-900.

We also highlight an important point raised by Justice Antonio T. Carpio in his dissenting opinion, where he stated: "Section 1, Article XVII of RA 9054 erects a high vote threshold for each House of Congress to surmount, effectively and unconstitutionally, taking RA 9054 beyond the reach of Congress' amendatory powers. One Congress cannot limit or reduce the plenary legislative power of succeeding Congresses by requiring a higher vote threshold than what the Constitution requires to enact, amend or repeal laws. **No law can be passed fixing such a higher vote threshold because Congress has no power, by ordinary legislation, to amend the Constitution**."[19]

Plebiscite requirement in RA No. 9054 overly broad

Similarly, we struck down the petitioners' contention that the plebiscite requirement[20] applies to all amendments of RA No. 9054 for being an unreasonable enlargement of the plebiscite requirement set forth in the Constitution.

Section 18, Article X of the Constitution provides that "[t]he creation of the autonomous region shall be effective when approved by majority of the votes cast by the constituent units in a plebiscite called for the purpose[.]" We interpreted this to mean that only amendments to, or revisions of, the Organic Act constitutionally-essential to the creation of autonomous regions – *i.e.*, those aspects specifically mentioned in the Constitution which Congress must provide for in the Organic Act[21] – require ratification through a plebiscite. We stand by this interpretation.

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[19] *Rollo*, G.R. No. 196271, pp. 1084-1085.

[20] Section 3, Article XVII of RA No. 9054 provides: "Any amendment to or revision of this Organic Act shall become effective only when approved by a majority of the vote cast in a plebiscite called for the purpose, which shall be held not earlier than sixty (60) days or later than ninety (90) days after the approval of such amendment or revision."

[21] These include: (a) the basic structure of the regional government; (b) the region's judicial system, *i.e.*, the special courts with personal, family, and property law jurisdiction; and (c) the grant and extent of the legislative powers constitutionally conceded to the regional government under Section 20, Article X of the Constitution.

The petitioners argue that to require all amendments to RA No. 9054 to comply with the plebiscite requirement is to recognize that sovereignty resides primarily in the people.

While we agree with the petitioners' underlying premise that sovereignty ultimately resides with the people, we disagree that this legal reality necessitates compliance with the plebiscite requirement for **all** amendments to RA No. 9054. For if we were to go by the petitioners' interpretation of Section 18, Article X of the Constitution that all amendments to the Organic Act have to undergo the plebiscite requirement before becoming effective, this would lead to impractical and illogical results – hampering the ARMM's progress by impeding Congress from enacting laws that timely address problems as they arise in the region, as well as weighing down the ARMM government with the costs that unavoidably follow the holding of a plebiscite.

Interestingly, the petitioner in G.R. No. 197282 posits that RA No. 10153, in giving the President the power to appoint OICs to take the place of the elective officials of the ARMM, creates a fundamental change in the basic structure of the government, and thus requires compliance with the plebiscite requirement embodied in RA No. 9054.

Again, we disagree.

The pertinent provision in this regard is Section 3 of RA No. 10153, which reads:

> Section 3. *Appointment of Officers-in-Charge.* — The President shall appoint officers-in-charge for the Office of the Regional Governor, Regional Vice Governor and Members of the Regional Legislative Assembly who shall perform the functions pertaining to the said offices until the officials duly elected in the May 2013 elections shall have qualified and assumed office.

We cannot see how the above-quoted provision has changed the basic structure of the ARMM regional government. On the contrary, this provision clearly preserves the basic structure of the ARMM regional government when it recognizes the offices of the ARMM regional government and directs the OICs who

shall temporarily assume these offices to "perform the functions pertaining to the said offices."

Unconstitutionality of the holdover provision

The petitioners are one in defending the constitutionality of Section 7(1), Article VII of RA No. 9054, which allows the regional officials to remain in their positions in a holdover capacity. The petitioners essentially argue that the ARMM regional officials should be allowed to remain in their respective positions until the May 2013 elections since there is no specific provision in the Constitution which prohibits regional elective officials from performing their duties in a holdover capacity.

The pertinent provision of the Constitution is Section 8, Article X which provides:

> Section 8. The **term of office of elective local officials**, except *barangay* officials, which shall be determined by law, **shall be three years** and no such official shall serve for more than three consecutive terms. [emphases ours]

On the other hand, Section 7(1), Article VII of RA No. 9054 provides:

> Section 7. Terms of Office of Elective Regional Officials. – (1) Terms of Office. The terms of office of the Regional Governor, Regional Vice Governor and members of the Regional Assembly shall be for a period of three (3) years, which shall begin at noon on the 30th day of September next following the day of the election and shall end at noon of the same date three (3) years thereafter. The incumbent elective officials of the autonomous region shall continue in effect until their successors are elected and qualified.

The clear wording of Section 8, Article X of the Constitution expresses the intent of the framers of the Constitution to categorically set a limitation on the period within which all elective local officials can occupy their offices. We have already established that elective ARMM officials are also local officials; they are, thus, bound by the three-year term limit prescribed by the Constitution. It, therefore, becomes irrelevant that the Constitution does not expressly prohibit elective officials from

acting in a holdover capacity. **Short of amending the Constitution, Congress has no authority to extend the three-year term limit by inserting a holdover provision in RA No. 9054**. Thus, the term of three years for local officials should stay at three (3) years, as fixed by the Constitution, and cannot be extended by holdover by Congress.

Admittedly, we have, in the past, recognized the validity of holdover provisions in various laws. One significant difference between the present case and these past cases[22] is that while these past cases all refer to elective *barangay* or *sangguniang kabataan* officials whose terms of office are not explicitly provided for in the Constitution, the present case refers to local elective officials – the ARMM Governor, the ARMM Vice Governor, and the members of the Regional Legislative Assembly – whose terms fall within the three-year term limit set by Section 8, Article X of the Constitution.

Even assuming that a holdover is constitutionally permissible, and there had been statutory basis for it (namely Section 7, Article VII of RA No. 9054), the rule of holdover can only apply as an available option where no express or implied legislative intent to the contrary exists; it cannot apply where such contrary intent is evident.[23]

Congress, in passing RA No. 10153 and removing the holdover option, has made it clear that it wants to suppress the holdover rule expressed in RA No. 9054. Congress, in the exercise of its plenary legislative powers, has clearly acted within its discretion when it deleted the holdover option, and this Court has no authority to question the wisdom of this decision, absent any evidence of unconstitutionality or grave abuse of discretion. It is for the legislature and the executive, and not this Court, to decide how to fill the vacancies in the ARMM regional

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[22] *Adap v. Commission on Elections*, G.R. No. 161984, February 21, 2007, 516 SCRA 403; *Sambarani v. COMELEC*, 481 Phil. 661 (2004); and *Montesclaros v. Comelec*, 433 Phil. 620 (2002).

[23] *Guekeko v. Santos*, 76 Phil. 237 (1946).

government which arise from the legislature complying with the constitutional mandate of synchronization.

COMELEC has no authority to hold special elections

Neither do we find any merit in the contention that the Commission on Elections (*COMELEC*) is sufficiently empowered to set the date of special elections in the ARMM. To recall, the Constitution has merely empowered the COMELEC to enforce and administer all laws and regulations relative to the conduct of an election.[24] Although the legislature, under the Omnibus Election Code (*Batas Pambansa Bilang* [*BP*] 881), has granted the COMELEC the power to postpone elections to another date, this power is confined to the specific terms and circumstances provided for in the law. Specifically, this power falls within the narrow confines of the following provisions:

> Section 5. *Postponement of election.* – When for any serious cause such as **violence**, **terrorism**, **loss or destruction of election paraphernalia** or records, ***force majeure***, and **other analogous causes** of such a nature that the holding of a free, orderly and honest election should become impossible in any political subdivision, the Commission, *motu proprio* or upon a verified petition by any interested party, and after due notice and hearing, whereby all interested parties are afforded equal opportunity to be heard, shall **postpone the election therein to a date which should be reasonably close to the date of the election not held, suspended or which resulted in a failure to elect** but not later than thirty days after the cessation of the cause for such postponement or suspension of the election or failure to elect.
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> Section 6. *Failure of election.* – If, on account of ***force majeure***, **violence**, **terrorism**, **fraud**, or **other analogous causes the election in any polling place has not been held on the date fixed,** or **had been suspended** before the hour fixed by law for the closing of the voting, or after the voting and during the preparation and the transmission of the election returns or in the custody or canvass thereof, **such election results in a failure to elect**, and in any of such cases the failure or suspension of election would affect the result of the election, the Commission shall, on the basis of a

[24] See CONSTITUTION, Article IX(C), Section 2.

verified petition by any interested party and after due notice and hearing, call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect on a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect but not later than thirty days after the cessation of the cause of such postponement or suspension of the election or failure to elect. [emphases and underscoring ours]

As we have previously observed in our assailed decision, both Section 5 and Section 6 of BP 881 address instances where elections have already been scheduled to take place but do not occur or had to be suspended because of **unexpected** and **unforeseen** circumstances, such as violence, fraud, terrorism, and *other analogous circumstances*.

In contrast, the ARMM elections were **postponed by law**, in **furtherance of the constitutional mandate of synchronization** of national and local elections. Obviously, this does not fall under any of the circumstances contemplated by Section 5 or Section 6 of BP 881.

More importantly, RA No. 10153 has already fixed the date for the next ARMM elections and the COMELEC has no authority to set a different election date.

Even assuming that the COMELEC has the authority to hold special elections, and this Court can compel the COMELEC to do so, there is still the problem of having to shorten the terms of the newly elected officials in order to synchronize the ARMM elections with the May 2013 national and local elections. Obviously, neither the Court nor the COMELEC has the authority to do this, amounting as it does to an amendment of Section 8, Article X of the Constitution, which limits the term of local officials to three years.

President's authority to appoint OICs

The petitioner in G.R. No. 197221 argues that the President's power to appoint pertains only to appointive positions and cannot extend to positions held by elective officials.

The power to appoint has traditionally been recognized as executive in nature.[25] Section 16, Article VII of the Constitution describes in broad strokes the extent of this power, thus:

> Section 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. **He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint.** The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards. [emphasis ours]

The 1935 Constitution contained a provision similar to the one quoted above. Section 10(3), Article VII of the 1935 Constitution provides:

> (3) The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and Air Forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, **and those whom he may be authorized by law to appoint**; but the Congress may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments. [emphasis ours]

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[25] *Hon. Luis Mario M. General, Commissioner, National Police Commission v. Hon. Alejandro S. Urro, in his capacity as the new appointee vice herein petitioner Hon. Luis Mario M. General, National Police Commission,* and *Hon. Luis Mario M. General, Commissioner, National Police Commission v. President Gloria Macapagal-Arroyo, thru Executive Secretary Leandro Mendoza, in Her capacity as the appointing power, Hon. Ronaldo V. Puno, in His capacity as Secretary of the Department of Interior and Local Government and as Ex-Officio Chairman of the National Police Commission and Hon. Eduardo U. Escueta, Alejandro S. Urro, and Hon. Constancia P. de Guzman as the midnight appointee,* G.R. No. 191560, March 29, 2011.

The main distinction between the provision in the 1987 Constitution and its counterpart in the 1935 Constitution is the sentence construction; while in the 1935 Constitution, the various appointments the President can make are enumerated in a single sentence, the 1987 Constitution enumerates the various appointments the President is empowered to make and divides the enumeration in two sentences. The change in style is significant; in providing for this change, the framers of the 1987 Constitution clearly sought to make a distinction between the first group of presidential appointments and the second group of presidential appointments, as made evident in the following exchange:

> MR. FOZ. Madame President x x x I propose to put a period (.) after "captain" and x x x delete "and all" and substitute it with HE SHALL ALSO APPOINT ANY.
>
> MR. REGALADO. Madam President, the Committee accepts the proposed amendment because it makes it clear that those other officers mentioned therein do not have to be confirmed by the Commission on Appointments.[26]

The first group of presidential appointments, specified as the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the Armed Forces, and other officers whose appointments are vested in the President by the Constitution, pertains to the appointive officials who have to be confirmed by the Commission on Appointments.

The second group of officials the President can appoint are "all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint."[27] The second sentence acts as the "catch-all provision" for the President's appointment power, in recognition of the fact that the power to appoint is essentially executive in nature.[28] The wide latitude given to the President

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[26] II Record of the Constitutional Commission, July 31, 1986, p. 520.

[27] CONSTITUTION, Article VII, Section 16.

[28] *Pimentel, Jr. v. Exec. Secretary Ermita*, 509 Phil. 567 (2005).

to appoint is further demonstrated by the recognition of the President's power to appoint officials ***whose appointments are not even provided for by law***. In other words, where there are offices which have to be filled, but the law does not provide the process for filling them, the Constitution recognizes the power of the President to fill the office by appointment.

Any limitation on or qualification to the exercise of the President's appointment power should be strictly construed and must be clearly stated in order to be recognized.[29] Given that the President derives his power to appoint OICs in the ARMM regional government from law, it falls under the classification of presidential appointments covered by the second sentence of Section 16, Article VII of the Constitution; the President's appointment power thus rests on clear constitutional basis.

The petitioners also jointly assert that RA No. 10153, in granting the President the power to appoint OICs in elective positions, violates Section 16, Article X of the Constitution,[30] which merely grants the President the power of supervision over autonomous regions.

This is an overly restrictive interpretation of the President's appointment power. There is no incompatibility between the President's power of supervision over local governments and autonomous regions, and the power granted to the President, within the specific confines of RA No. 10153, to appoint OICs.

The power of supervision is defined as "the power of a superior officer to see to it that lower officers perform their functions in accordance with law."[31] This is distinguished from the power of control or "the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance

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[29] *Id.* at 573, citing *Sarmiento III v. Commissioner Mison*, 240 Phil. 505 (1987).

[30] Section 16. The President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed.

[31] *Bito-onon v. Hon. Yap Fernandez*, 403 Phil. 693, 702 (2001), citing *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 141.

of his duties and to substitute the judgment of the former for the latter."[32]

The petitioners' apprehension regarding the President's alleged power of control over the OICs is rooted in their belief that the President's appointment power includes the power to remove these officials at will. In this way, the petitioners foresee that the appointed OICs will be beholden to the President, and act as representatives of the President and not of the people.

Section 3 of RA No. 10153 expressly contradicts the petitioners' supposition. The provision states:

> Section 3. Appointment of Officers-in-Charge. — The President shall appoint officers-in-charge for the Office of the Regional Governor, Regional Vice Governor and Members of the Regional Legislative Assembly who shall perform the functions pertaining to the said offices until the officials duly elected in the May 2013 elections shall have qualified and assumed office.

The wording of the law is clear. Once the President has appointed the OICs for the offices of the Governor, Vice Governor and members of the Regional Legislative Assembly, these same officials will remain in office until they are replaced by the duly elected officials in the May 2013 elections. Nothing in this provision even hints that the President has the power to recall the appointments he already made. Clearly, the petitioners' fears in this regard are more apparent than real.

RA No. 10153 as an interim measure

We reiterate once more the importance of considering RA No. 10153 not in a vacuum, but within the context it was enacted in. In the first place, Congress enacted RA No. 10153 primarily to heed the constitutional mandate to synchronize the ARMM regional elections with the national and local elections. To do this, Congress had to postpone the scheduled ARMM elections for another date, leaving it with the problem of ***how to provide the ARMM with governance in the intervening period,*** between

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[32] *Drilon v. Lim, supra,* at 140-141.

the expiration of the term of those elected in August 2008 and the assumption to office – twenty-one (21) months away – of those who will win in the synchronized elections on May 13, 2013.

In our assailed Decision, we already identified the three possible solutions open to Congress to address the problem created by synchronization – (a) allow the incumbent officials to remain in office after the expiration of their terms in a holdover capacity; (b) call for special elections to be held, and shorten the terms of those to be elected so the next ARMM regional elections can be held on May 13, 2013; or (c) recognize that the President, in the exercise of his appointment powers and in line with his power of supervision over the ARMM, can appoint interim OICs to hold the vacated positions in the ARMM regional government upon the expiration of their terms. We have already established the unconstitutionality of the first two options, leaving us to consider the last available option.

In this way, RA No. 10153 is in reality an interim measure, enacted to respond to the adjustment that synchronization requires. Given the context, we have to judge RA No. 10153 by the standard of reasonableness in responding to the challenges brought about by synchronizing the ARMM elections with the national and local elections. In other words, "***given the plain unconstitutionality of providing for a holdover and the unavailability of constitutional possibilities for lengthening or shortening the term of the elected ARMM officials, is the choice of the President's power to appoint – for a fixed and specific period as an interim measure, and as allowed under Section 16, Article VII of the Constitution – an unconstitutional or unreasonable choice for Congress to make?***"[33]

We admit that synchronization will temporarily disrupt the election process in a local community, the ARMM, as well as the community's choice of leaders. However, we have to keep in mind that the adoption of this measure is a matter of necessity in order to comply with a mandate that the Constitution itself has

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[33] *Rollo,* G.R. No. 196271, pp. 1057-1058.

set out for us. Moreover, the implementation of the provisions of RA No. 10153 as an interim measure is comparable to the interim measures traditionally practiced when, for instance, the President appoints officials holding elective offices upon the creation of new local government units.

The grant to the President of the power to appoint OICs in place of the elective members of the Regional Legislative Assembly is neither novel nor innovative. The power granted to the President, *via* RA No. 10153, to appoint members of the Regional Legislative Assembly is comparable to the power granted by BP 881 (the Omnibus Election Code) to the President to fill *any vacancy for any cause* in the Regional Legislative Assembly (then called the *Sangguniang Pampook*).[34]

Executive is not bound by the principle of judicial courtesy

The petitioners in G.R. No. 197280, in their Manifestation and Motion dated December 21, 2011, question the propriety of the appointment by the President of Mujiv Hataman as acting Governor and Bainon Karon as acting Vice Governor of the ARMM. They argue that since our previous decision was based on a close vote of 8-7, and given the numerous motions for reconsideration filed by the parties, the President, in recognition of the principle of judicial courtesy, should have refrained from implementing our decision until we have ruled with finality on this case.

We find the petitioners' reasoning specious.

Firstly, the principle of judicial courtesy is based on the hierarchy of courts and applies only to lower courts in instances where, even if there is no writ of preliminary injunction or TRO issued by a higher court, it would be proper for a lower court to suspend its proceedings for practical and ethical

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[34] Section 35. Filling of vacancy. – Pending an election to fill a vacancy arising from any cause in the Sangguniang Pampook, the vacancy shall be filled by the President, upon recommendation of the Sangguniang Pampook: Provided, That the appointee shall come from the same province or sector of the member being replaced.

considerations.[35] In other words, the principle of "judicial courtesy" applies where there is a strong probability that the issues before the higher court would be rendered moot and moribund as a result of the continuation of the proceedings in the lower court or court of origin.[36] Consequently, this principle cannot be applied to the President, who represents a co-equal branch of government. To suggest otherwise would be to disregard the principle of separation of powers, on which our whole system of government is founded upon.

Secondly, the fact that our previous decision was based on a slim vote of 8-7 does not, and cannot, have the effect of making our ruling any less effective or binding. Regardless of how close the voting is, so long as there is concurrence of the majority of the members of the *en banc* who actually took part in the deliberations of the case,[37] a decision garnering only 8 votes out of 15 members is still a decision of the Supreme Court *en banc* and must be respected as such. The petitioners are, therefore, not in any position to speculate that, based on the voting, "the probability exists that their motion for reconsideration may be granted."[38]

Similarly, the petitioner in G.R. No. 197282, in his Very Urgent Motion to Issue Clarificatory Resolution, argues that since motions for reconsideration were filed by the aggrieved parties challenging our October 18, 2011 decision in the present case, the TRO we initially issued on September 13, 2011 should remain subsisting and effective. He further argues that any attempt by the Executive to implement our October 18, 2011

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[35] *Rep. of the Phils. v. Sandiganbayan (First Div.)*, 525 Phil. 804 (2006).

[36] *Eternal Gardens Memorial Park Corp. v. Court of Appeals*, 247 Phil. 387, 394 (1988).

[37] Section 1(a), Rule 12 of the 2010 Internal Rules of the Supreme Court provides: SECTION 1. *Voting requirements*. – (a) All decisions and actions in Court *en banc* cases shall be made upon the concurrence of the majority of the Members of the Court who actually took part in the deliberations on the issue or issues involved and voted on them.

[38] *Rollo*, G.R. No. 196271, p. 1440.

decision pending resolution of the motions for reconsideration "borders on disrespect if not outright insolence"[39] to this Court.

In support of this theory, the petitioner cites *Samad v. COMELEC*,[40] where the Court held that while it had already issued a decision lifting the TRO, the lifting of the TRO is not yet final and executory, and can also be the subject of a motion for reconsideration. The petitioner also cites the minute resolution issued by the Court in *Tolentino v. Secretary of Finance*,[41] where the Court reproached the Commissioner of the Bureau of Internal Revenue for manifesting its intention to implement the decision of the Court, noting that the Court had not yet lifted the TRO previously issued.[42]

We agree with the petitioner that the lifting of a TRO can be included as a subject of a motion for reconsideration filed to assail our decision. It does not follow, however, that the TRO remains effective until after we have issued a final and executory decision, especially considering the clear wording of the dispositive portion of our October 18, 2011 decision, which states:

WHEREFORE, premises considered, we **DISMISS** the consolidated petitions assailing the validity of RA No. 10153 for lack of merit, and UPHOLD the constitutionality of this law. **We likewise LIFT**

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[39] *Tolentino v. Secretary of Finance*, G.R. No. 115455, September 23, 1994, Minute Resolution.

[40] G.R. Nos. 107854 and 108642, July 16, 1993, 224 SCRA 631.

[41] G.R. Nos. 115455, 115525, 115543, 115544, 115754, 115781, 115852, 115873, and 115931, August 25, 1994, 235 SCRA 630.

[42] The Court, in its Minute Resolution dated September 23, 1994, stated thus:

The Court calls the attention of respondents of the fact that the temporary restraining order issued on June 30, 1994 was effective immediately and continuing until further orders from this Court. Although the petitions in connection with which the TRO was issued were subsequently dismissed, the decision is not yet final and **the TRO previously issued has not been lifted** xxx because the TRO in these cases was expressly made effective until otherwise ordered by this Court. (*Rollo*, G.R. No. 196271, p. 1426; emphasis ours.)

the temporary restraining order we issued in our Resolution of September 13, 2011. No costs.[43] (emphases ours)

In this regard, we note an important distinction between *Tolentino* and the present case. While it may be true that *Tolentino* and the present case are similar in that, in both cases, the petitions assailing the challenged laws were dismissed by the Court, an examination of the dispositive portion of the decision in *Tolentino* reveals that the Court did not categorically lift the TRO. In sharp contrast, in the present case, we expressly lifted the TRO issued on September 13, 2011. There is, therefore, no legal impediment to prevent the President from exercising his authority to appoint an acting ARMM Governor and Vice Governor as specifically provided for in RA No. 10153.

Conclusion

As a final point, we wish to address the bleak picture that the petitioner in G.R. No. 197282 presents in his motion, that our Decision has virtually given the President the power and authority to appoint 672,416 OICs in the event that the elections of *barangay* and *Sangguniang Kabataan* officials are postponed or cancelled.

We find this speculation nothing short of fear-mongering.

This argument fails to take into consideration the unique factual and legal circumstances which led to the enactment of RA No. 10153. RA No. 10153 was passed in order to synchronize the ARMM elections with the national and local elections. In the course of synchronizing the ARMM elections with the national and local elections, Congress had to grant the President the power to appoint OICs in the ARMM, in light of the fact that: (a) holdover by the incumbent ARMM elective officials is legally impermissible; and (b) Congress cannot call for special elections and shorten the terms of elective local officials for less than three years.

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[43] *Rollo*, G.R. No. 196271, p. 1067.

Unlike local officials, as the Constitution does not prescribe a term limit for *barangay* and *Sangguniang Kabataan* officials, there is no legal proscription which prevents these specific government officials from continuing in a holdover capacity should some exigency require the postponement of *barangay* or *Sangguniang Kabataan* elections. Clearly, these fears have neither legal nor factual basis to stand on.

For the foregoing reasons, we deny the petitioners' motions for reconsideration.

WHEREFORE, premises considered, we **DENY** with **FINALITY** the motions for reconsideration for lack of merit and **UPHOLD** the constitutionality of RA No. 10153.

SO ORDERED.

Peralta, Bersamin, Villarama, Jr., Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio, J., reiterates his dissenting opinion.

Velasco, Jr., J., reiterates his dissenting opinion.

Leonardo-de Castro, J., maintains her vote joining the dissent of Justice Velasco, Jr.

Abad, J., maintains his dissent.

Perez, J., joins the dissent of *J.* Carpio.

Corona, C.J., no part.

Del Castillo, J., on official leave.

Sereno, J., on leave.

SECOND DIVISION

[G.R. No. 158379. February 29, 2012]

SPOUSES PONCIANO & PACITA DELA CRUZ, *petitioners, vs.* **HEIRS OF PABLO SUNIA, *ETC.*,**[1] *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; DOCKET FEES; IN MAKING AN ATTEMPT TO PAY THE NECESSARY DOCKET FEES WITHIN THE PRESCRIBED PERIOD, PETITIONERS SHOULD BE AFFORDED THE OPPORTUNITY TO RAISE THEIR CAUSE ON APPEAL.— Anent the issue of the failure to pay the corresponding docket fees, it must be emphasized that the truthfulness of the Affidavit of Roberto de la Cruz was never put in issue. The CA apparently believed him when he claimed that the trial court personnel refused to accept the payment. Neither did the appellate court question the date of the attempted payment, which was sometime in the second week of August. Considering that, based on the date of receipt of the Order, petitioners had until 22 August 2001 – which fell in the fourth week of August – to pay the docket fees, petitioners made their attempt to pay the necessary docket fees within the period prescribed in Section 4 of Rule 41. In the present case, petitioners cannot be held to be at fault for the dismissal of their appeal. It was the CA's erroneous application of the rules and the RTC personnel's refusal to accept the payment of docket fees that led to the dismissal of the appeal. It is evident that petitioners had every intention to pursue their cause, and that they consistently exerted efforts to access the courts. Thus, the general rules on technicalities find no application in this case. Petitioners should be afforded the opportunity to raise their cause on appeal; to hold otherwise would be to punish them for the fault of others and thus, deprive them of procedural due process.

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[1] Based on the Petition for Review on *Certiorari*. However, upon a review of the records of this case, the "*etc*." seems to pertain to the individual heirs of Pablo Sunia, namely, Patricia Gay D. Sunia and Cristina D. Sunia, represented by their attorney-in-fact Jose Santos Seeping, Jr.

2. ID.; ID.; REMAND OF THE CASE TO THE COURT OF APPEALS; PROPER.— Considering that there are factual and legal issues that still need to be threshed out, and that this Court is not a trier of facts, the appropriate action is to remand the case to the CA for further proceedings.

APPEARANCES OF COUNSEL

Ariel Joseph B. Arias for petitioners.
Edwin Z. Ferrer, Sr. for respondents.

D E C I S I O N

SERENO, *J.*:

Petitioners are assailing the twin Resolutions[2] of the Court of Appeals[3] (CA) in CA-G.R. CV No. UDK 0407 dated 6 January 2003 and 27 May 2003, respectively, dismissing the appeal filed before it.

On 24 April 1989, petitioners filed a Complaint with the Regional Trial Court (RTC), Branch 38, Daet, Camarines Norte for the cancellation of Original Certificate of Title (OCT) No. P-9681 under the name of Pablo Sunia. The contested property was a parcel of agricultural land with an area of 8,212 square meters located at Matnog, Basud, Camarines Norte.

Petitioners alleged that they had bought the property sometime in 1967 from spouses Ciriaco and Margarita Labaro and since then, religiously paid the corresponding real estate taxes. Subsequently, after the survey conducted by the then Bureau of Lands, the lot's area was plotted to be 8,078 square meters. Petitioners were also eventually issued a Certification in the name of Ponciano dela Cruz for a Free Patent dated 25 April 1983.

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

[3] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring.

It was sometime in 1979 or 1980 that they learned that the property they were occupying was included in OCT No. P-9681 in the name of Pablo Sunia. It appears that the spouses Labaro sold a lot with an area of three hectares in favor of one Francisco Tambunting. Thereafter, Tambunting mortgaged this lot to Philippine National Bank (PNB). The property then became the subject of a foreclosure proceeding and was eventually sold to Pablo Sunia.

During trial, petitioners presented evidence that tended to show that 4,571 square meters of petitioners' property overlapped with the three-hectare property of Sunia.[4] On the other hand, respondents presented a Deed of Reconveyance[5] wherein petitioners reconveyed the contested property to the Labaros. Respondents alleged that the contested property was included in the three-hectare land Pablo Sunia bought from PNB.

On 27 March 2001, after trial on the merits, the RTC promulgated its Decision,[6] the dispositive portion of which is as follows:

WHEREFORE, judgment is hereby rendered in favor of the defendants and against the plaintiff:

1. ordering the dismissal of the complaint;
2. declaring the plaintiffs without any right to the 8,078 square meters which they claim [sic] included in the defendants[']s title, and ordering them to vacate and surrender the same to the defendants;
3. ordering plaintiffs jointly and severally to pay defendants by way of damages ₱25,000.00 for attorney's fees and ₱10,000.00 for litigation expenses[,] the latter having been compelled to litigate.

No Costs.

SO ORDERED.

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[4] Records, p. 188.

[5] *Id.* at 271.

[6] *Rollo*, pp. 45-56.

On 8 May 2001, petitioners filed a Motion for Reconsideration. On 25 July 2001, the RTC issued an Order[7] denying the motion.

Subsequently, on 9 August 2001, petitioners filed a Notice of Appeal via registered mail.[8] It was received by the RTC on 14 August 2001. Thus, on 17 August 2001, the RTC issued another Order[9] stating as follows:

> The Notice of Appeal having been filed within the reglementary period, let, therefore, the entire records of this case be forwarded to the Court of Appeals for final determination.
>
> **SO ORDERED.**

It appears that petitioners, through their son Roberto dela Cruz, exerted efforts to pay the docket fees for the appeal sometime in the second week of August 2001. However, the RTC personnel refused to accept the payment and insisted that petitioners instead pay at the CA in Manila. Petitioners tried to pay again sometime in October 2001, in November 2001, and on 23 April 2002, to no avail.[10]

On 12 April 2002, petitioner received a CA Resolution dated 9 April 2002 directing the Branch Clerk of Court of the RTC to forward proof of payment of the docket fees.

On 24 April 2002, petitioners filed a Manifestation and Motion asking the CA to allow them to pay the docket fees, explaining why they were unable to do so within the period required by the Rules of Court.

On 4 October 2002, the CA issued a Resolution requiring petitioners to submit official receipts as proof of payment of the docket fees. Again, petitioners filed a Manifestation[11]

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[7] Records, pp. 403-404.

[8] *Id.* at 408-409.

[9] *Id.* at 410.

[10] Affidavit of Roberto P. dela Cruz; *rollo*, pp. 58-59.

[11] *Rollo*, pp. 60-62.

explaining to the court why they had failed to pay the required docket fees.

Eventually, on 6 January 2003, the CA issued the first assailed Resolution dismissing the appeal. It held that petitioners only had until 8 August 2001 to file their Notice of Appeal. In reaching this conclusion, it counted fifteen (15) days from 25 July 2001, the date when the RTC promulgated the Order denying the Motion for Reconsideration of petitioners. However, the CA considered 25 July 2001 as the first day in the counting. It held that since petitioners had filed their Notice of Appeal on 9 August 2001, they had filed out of time.

The CA also held that petitioners failed to pay the docket fees within the reglementary period. It apparently believed petitioners' allegations that the court personnel of the RTC refused the payment of docket fees. Nevertheless, the CA stated that since the payment had been made "sometime in the second week of August 2001," the payment was deemed likewise to have not been made on time:

> There is no showing that the appeal[,] docket and other legal fees were paid within the time to file an appeal. The Affidavit of Roberto de la Cruz , the son of plaintiffs[,] averred that sometime in the second week of August 2001, he went to the court (RTC Branch 38) to pay the required appeal/docket fee. However, he was told by one of the court's staff that the appeal/docket fee should be paid at the Court of Appeals, Manila and not at the lower court. (p. 36, *Rollo*).
>
> Sec. 4, Rule 41 of the 1997 Rules of Civil Procedure provides that "(W)ithin the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. xxx"
>
> In the case at bench, note that plaintiffs did not file the appellate docket and other legal fees within the period to file an appeal but only "(s)ometime in the second week of August 2001," when Roberto De la Cruz went to the court to pay the docket fees. Records will show that the notice of appeal was mailed, and not personally filed.

In view thereof, the motion to dismiss is hereby **GRANTED**. Accordingly, the instant appeal is **DISMISSED** for being filed beyond the reglementary period provided for by law and failure to pay the appellate docket fees.

SO ORDERED.[12]

Petitioners sought reconsideration of the Resolution of the CA, to no avail. In its 27 May 2003 Resolution, the CA explained that the right to appeal is not a natural right or a part of due process.

Petitioners are now before us, alleging that the CA erred in dismissing their appeal based on technicalities. They allege that had it applied a liberal interpretation of the Rules of Procedure, the case would have been given due course owing to the factual issues of the case – in particular, the contradictions apparent in the testimonial and documentary evidence.

In their Comment,[13] respondents did not squarely address the lone issue raised by petitioners. Instead, the former insisted that the trial court did not commit any error in deciding the case in their favor.

Respondents' Comment triggered an exchange of factual allegations. Thus, by the time the parties were required to file a memorandum in support of their case, petitioners' cause of action was no longer limited to the dismissal of the appeal, but included factual issues, to wit:[14]

1. Whether or not the Court of Appeals erred and acted with grave abuse of action when it dismissed the appeal filed by petitioners (then Plaintiffs-Appellants) before the said Court on the ground that the appeal was filed beyond the reglementary period and for allegedly failing to pay the appellate docket fees.

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[12] *Id.* at 10.

[13] *Id.* at 77-80.

[14] *Id.* at 138.

2. Whether or not the OCT No. P-9681 issued to the [respondents] should be nullified as it erroneously include the property owned by the petitioners;
3. Whether or not the petitioners are entitled to the recovery/ reconveyance of the subject property;
4. Whether or not the petitioners are entitled to damages suffered by them by reason of defendants (sic) illegal acts;
5. Whether or not the petitioners should be declared as the absolute owners of the property in question; and
6. Whether or not the petitioners may still challenge the validity of OCT No. P-9681 issued in the name of Pablo Sunia.

On the other hand, respondents reverted to the single issue raised in the Petition, that is, whether the appeal was properly dismissed by the CA.

The Petition is partly meritorious.

At the outset, the CA misinterpreted Rule 41, Section 3 of the Rules of Court, which states:

> Period of ordinary appeal. – The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.
>
> The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

Clearly, the CA erred in counting the fifteen (15)-day reglementary period from 25 July 2001 – the date the Order was issued – instead of from the day petitioners received that Order, or from 7 August 2001. From this date, petitioners had until 22 August 2001 to file their Notice of Appeal. As it was filed on 9 August 2001, petitioners complied with the requirements of Section 3 of Rule 41.

Even if we were to doubt the claim of petitioners that they received the 25 July 2001 Order on 7 August 2001, a quick look at the RTC records would reveal that this Order was sent

to the parties and their counsel by registered mail only on 3 August 2001.[15] At the earliest, the deadline for the filing of the Notice of Appeal and the payment of docket fees was 20 August 2001 – 18 August 2001 being a Saturday.

Anent the issue of the failure to pay the corresponding docket fees, it must be emphasized that the truthfulness of the Affidavit of Roberto de la Cruz was never put in issue. The CA apparently believed him when he claimed that the trial court personnel refused to accept the payment. Neither did the appellate court question the date of the attempted payment, which was sometime in the second week of August. Considering that, based on the date of receipt of the Order, petitioners had until 22 August 2001 – which fell in the fourth week of August[16] – to pay the docket fees, petitioners made their attempt to pay the necessary docket fees within the period prescribed in Section 4 of Rule 41.

In the present case, petitioners cannot be held to be at fault for the dismissal of their appeal. It was the CA's erroneous application of the rules and the RTC personnel's refusal to accept the payment of docket fees that led to the dismissal of the appeal. It is evident that petitioners had every intention to pursue their cause, and that they consistently exerted efforts to access the courts.

Thus, the general rules on technicalities find no application in this case. Petitioners should be afforded the opportunity to raise their cause on appeal; to hold otherwise would be to punish them for the fault of others and thus, deprive them of procedural due process.

Therefore, considering that there are factual and legal issues that still need to be threshed out, and that this Court is not a trier of facts, the appropriate action is to remand the case to the CA for further proceedings.

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[15] The registered receipts evidencing service upon the parties and their counsel are inserted in the RTC records between pp. 403 and 404.

[16] 1 August 2001 fell on a Wednesday.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**, in so far as this case is **REMANDED** to the Court of Appeals for further proceedings, subject to the payment of the corresponding docket fees within fifteen (15) days from notice of this Decision.

Let the records and the CA *rollo* of this case be transmitted accordingly.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 169903. February 29, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HONEYCOMB FARMS CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; INHERENT POWERS OF THE STATE ; EMINENT DOMAIN; JUST COMPENSATION; PAYMENT THEREOF, REQUIRED; RATIONALE.— When the State exercises its inherent power of eminent domain, the Constitution imposes the corresponding obligation to compensate the landowner for the expropriated property. This principle is embodied in Section 9, Article III of the Constitution, which provides: "*Private property shall not be taken for public use without just compensation*." When the State exercises the power of eminent domain in the implementation of its agrarian reform program, the constitutional provision which governs is Section 4, Article XIII of the Constitution, x x x Notably, this provision also imposes upon the State the obligation of paying the landowner compensation for the land taken, even if

it is for the government's agrarian reform purposes. Specifically, the provision makes use of the phrase "just compensation," the same phrase used in Section 9, Article III of the Constitution. That the compensation mentioned here pertains to the fair and full price of the taken property is evident from the following exchange between the members of the Constitutional Commission during the discussion on the government's agrarian reform program.

2. ID.; ID.; ID.; ID.; THE REGIONAL TRIAL COURT (RTC) SITTING AS SPECIAL AGRARIAN COURT (SAC) HAS THE POWER TO DETERMINE JUST COMPENSATION.— That it is the RTC, sitting as a SAC, which has the power to determine just compensation for parcels of land acquired by the State, pursuant to the agrarian reform program, is made clear in Section 57 of RA 6657.

3. ID.; ID.; ID.; ID.; MANDATORY APPLICATION OF THE FORMULA TO DETERMINE JUST COMPENSATION; SUSTAINED.— To guide the RTC in this function, Section 17 of RA 6657 enumerates the factors that have to be taken into consideration to accurately determine just compensation. x x x In *Land Bank of the Philippines v. Sps. Banal*, we recognized that the DAR, as the administrative agency tasked with the implementation of the agrarian reform program, already came up with a formula to determine just compensation which incorporated the factors enumerated in Section 17 of RA 6657. x x x In *Landbank of the Philippines v. Celada*, we emphasized the duty of the RTC to apply the formula provided in the applicable DAR AO to determine just compensation, x x x We reiterated the mandatory application of the formula in the applicable DAR administrative regulations in *Land Bank of the Philippines v. Lim*, *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, and *Land Bank of the Philippines v. Barrido*. x x x These rulings plainly impose on the RTC the duty to apply the formula laid down in the pertinent DAR administrative regulations to determine just compensation. Clearly, the CA and the RTC acted with grievous error when they disregarded the formula laid down by the DAR, and chose instead to come up with their own basis for the valuation of the subject land.

4. ID.; ID.; ID.; HEARING IS NECESSARY BEFORE THE RTC TAKES JUDICIAL NOTICE OF THE NATURE OF THE LAND;

EXPLAINED.— While the lower court is not precluded from taking judicial notice of certain facts, it must exercise this right within the clear boundary provided by Section 3, Rule 129 of the Rules of Court, which provides: Section 3. *Judicial notice, when hearing necessary*. – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and **allow the parties to be heard** thereon. x x x The classification of the land is obviously essential to the valuation of the subject property, which is the very issue in the present case. The parties should thus have been given the opportunity to present evidence on the nature of the property before the lower court took judicial notice of the commercial nature of a portion of the subject landholdings. x x x In these lights, we find that a remand of this case to the court of origin is necessary for the determination of just compensation, in accordance with the formula stated in DAR AO No. 6, series of 1992, as amended by DAR AO No. 11, series of 1994, which are the applicable issuances on fixing just compensation.

5. ID.; ID.; ID.; JUST COMPENSATION; PAYMENT THRU TRUST ACCOUNT, VOID; EFFECT OF CONVERTING TRUST ACCOUNT INTO A DEPOSIT ACCOUNT, EXPLAINED; APPLICATION IN CASE AT BAR.— In *Land Bank of the Phil. v. CA*, this Court struck down as void DAR Administrative Circular No. 9, Series of 1990, providing for the opening of trust accounts in lieu of the deposit in cash or in bonds contemplated in Section 16(e) of RA 6657. We said: It is very explicit x x x [from Section 16(e)] that the deposit must be made only in "cash" or in "LBP bonds." Nowhere does it appear nor can it be inferred that the deposit can be made in any other form. If it were the intention to include a "trust account" among the valid modes of deposit, that should have been made express, or at least, qualifying words ought to have appeared from which it can be fairly deduced that a "trust account" is allowed. In sum, there is no ambiguity in Section 16(e) of RA 6657 to warrant an expanded construction of the term "deposit." x x x As a result, the DAR issued AO No. 2, Series of 1996, converting trust accounts into deposit accounts. x x x Recognizing that the belated conversion of the trust account into a deposit account failed to address the injustice caused to the landowner by the delay in its receipt of the just

> compensation due, we held in *Wycoco* that: In light of the foregoing, the trust account opened by LBP in the name of Wycoco as the mode of payment of just compensation should be converted to a deposit account. **Such conversion should be retroactive in application in order to rectify the error committed by the DAR in opening a trust account and to grant the landowners the benefits concomitant to payment in cash or LBP bonds prior to the ruling of the Court in *Land Bank of the Philippines v. Court of Appeals***. Otherwise, petitioner's right to payment of just and valid compensation for the expropriation of his property would be violated. The interest earnings accruing on the deposit account of landowners would suffice to compensate them pending payment of just compensation. x x x In line with this ruling, the LBP is instructed to immediately convert the trust account opened in the name of Honeycomb Farms to a deposit account. Furthermore, the just compensation due Honeycomb Farms, as determined by the RTC, should bear 12% interest per annum from the time LBP opened the trust account in its name until the account is converted into cash and LBP bonds deposit accounts.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Pejo Aquino and Associates for respondent.

D E C I S I O N

BRION, *J.*:

The petition for review before us assails the decision[1] dated March 31, 2005 of the Court of Appeals (*CA*) in CA-G.R. CV No. 66023, which affirmed with modification the judgment dated July 6, 1999 rendered by the Regional Trial Court (*RTC*) of Masbate, Masbate, Branch 48, acting as a Special Agrarian Court (*SAC*) in Special Civil Case No. 4323 for Determination

[1] Penned by Associate Justice Josefina Guevara-Salonga, and concurred in by Associate Justices Ruben T. Reyes (now a retired member of this Court) and Fernanda Lampas Peralta; *rollo*, pp. 32-41.

and Payment of Just Compensation. The petition also prays for the reversal of the resolution of the CA,[2] dated October 4, 2005, denying reconsideration.

FACTUAL ANTECEDENTS

Honeycomb Farms Corporation (*Honeycomb Farms*) was the registered owner of two parcels of agricultural land in Cataingan, Masbate. The first parcel of land was covered by Transfer Certificate of Title (*TCT*) No. T-2872 and has an area of 240.8874 hectares. The second parcel of land was covered by TCT No. T-2549 and has an area of 254.25 hectares.[3] On February 5, 1988, Honeycomb Farms voluntarily offered these parcels of land, with a total area of 495.1374 hectares, to the Department of Agrarian Reform (*DAR*) for coverage under Republic Act No. (*RA*) 6657, the Comprehensive Agrarian Reform Law (*CARL*), for ₱10,480,000.00,[4] or ₱21,165.00 per hectare.[5] From the entire area offered, the government chose to acquire only 486.0907 hectares.

The Land Bank of the Philippines (*LBP*), as the agency vested with the responsibility of determining the land valuation and compensation for parcels of land acquired pursuant to the CARL,[6] and using the guidelines set forth in DAR Administrative Order (*AO*) No. 17, series of 1989, as amended by DAR AO No. 3, series of 1991, fixed the value of these parcels of land, as follows:

Acquired property	Area in hectares	Value
TCT No. T-2872	231.8406	₱ 910,262.62[7]
TCT No. T-2549	254.25	₱1,023,520.56[8]

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

[3] *Id.* at 33.

[4] *Id.* at 159.

[5] *Id.* at 289.

[6] Pursuant to Executive Order No. 405. See also *Republic of the Philippines v. CA*, 331 Phil. 1070 (1996).

[7] Records, p. 8.

[8] *Id.* at 9.

When Honeycomb Farms rejected this valuation for being too low, the Voluntary Offer to Sell was referred to the DAR Adjudication Board, Region V, Legaspi City, for a summary determination of the market value of the properties.[9] After these administrative proceedings, the Regional Adjudicator fixed the value of the landholdings at ₱5,324,549.00, broken down as follows:

I. TCT No. T-2872

Land use	**Value per hectare**	**Area**	**Total (Pesos)**
Cornland	₱12,000.00	69.158	829,896.00
Upland (cassava)	12,000.00	1.3888	16,665.60
Cocoland	15,000.00	13.65	204,750.00
Grass land	10,000.00	147.6438	1,476,438.00
TOTAL		**231.8408**	**2,527,749.60**

II. TCT No. T-2549

Land use	**Value per hectare**	**Area**	**Total (Pesos)**
Coconut land	₱15,000.00	4.6	69,000.00
Cornland	12,000.00	101	212,000.00
Riceland (upland)	14,000.00	5	70,000.00
Cassava	12,000.00	4.65	55,800.00
Cogon	10,000.00	139	1,390,000.00
TOTAL		**254.25**	**2,796,800.00**[10]

Still, Honeycomb Farms rejected this valuation.

On July 4, 1994, Honeycomb Farms filed a case with the RTC, acting as a SAC, against the DAR Secretary and the LBP, praying that it be compensated for its landholdings in the amount of ₱12,440,000.00, with damages and attorney's fees.

The RTC constituted a Board of Commissioners to aid the court in determining the just compensation for the subject properties. The Board of Commissioners, however, failed to agree on a common valuation for the properties.

Honeycomb Farms, thereafter, filed an amended complaint, where it increased the valuation of the properties to

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[9] *Id.* at 292.

[10] *Id.* at 13.

₱20,000,000.00.[11] The LBP, on the other hand, filed an amended answer where it admitted the preliminary valuation it made on the properties, but alleged that it had revalued the land registered under TCT No. T-2872 at ₱1,373,244.78, while the land registered under TCT No. T-2549 was revalued at ₱1,513,097.57.[12]

THE RTC DECISION

On July 6, 1999, the RTC issued a judgment whose dispositive portion reads:

> WHEREFORE, judgment is hereby rendered by:
>
> 1.) Fixing the just compensation of the two parcels of land owned by the Honeycomb Farm[s] Corp. under TCT No. T-2872 and TCT No. T-2549 with a total area of 486.0907 hectares which is considered a[s] Carpable in the sum of ₱25,232,000 subject to the lien for the docket fee the amount in excess of ₱20,000,000 as pleaded for in the amended complaint.
>
> 2.) Ordering the defendants to jointly and severally pay Attorney's fee[s] equivalent to 10% of the total just compensation; without pronouncement as to cost.
>
> SO ORDERED.[13]

Since the Board of Commissioners could not reach a common valuation for the properties, the RTC made its own valuation. First, the RTC took judicial notice of the fact that a portion of the land, measuring approximately 10 hectares, is commercial land, since it is located a few kilometers away from Sitio Curvada, Pitago, Cataingan, Masbate, which is a commercial district. The lower court thus priced the 10 hectares at ₱100,000.00 per hectare and the remaining 476 hectares at ₱32,000.00 per hectare.

Both parties appealed to the CA.

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[11] *Id.* at 294.

[12] *Id.* at 299.

[13] *Id.* at 541.

Honeycomb Farms alleged that the government failed to pay just compensation for its land when the LBP opened a trust account in its behalf, in violation of the Court's ruling in *Landbank of the Phils. v. CA*.[14] Since it was never paid just compensation, the taking of its land is illegal. Consequently, the just compensation should thus be determined based on factors existing at the time of the fixing of just compensation, and not at the time the properties were actually taken.

The LBP, on the other hand, argued that the RTC committed a serious error when it disregarded the formula for fixing just compensation embodied in DAR AO No. 6, series of 1992, as amended by DAR AO No. 11, series of 1994. The LBP also argued that the RTC erred in taking judicial notice that 10 hectares of the land in question is commercial land. Lastly, the LBP assailed the award of attorney's fees for having no legal or factual basis.[15]

THE CA DECISION

The CA, in its March 31, 2005 decision, affirmed with modification the assailed RTC judgment. The dispositive portion of the decision reads:

> WHEREFORE, the foregoing considered, the assailed decision is MODIFIED only with respect to the computation of the amount fixed by the trial court which is hereby corrected and fixed in the total amount of ₱16,232,000.00, and the award of attorney's fees is deleted. The rest of the decision is AFFIRMED.[16]

The CA held that the lower courts are not bound by the factors enumerated in Section 17 of RA 6657 which are mere statutory guideposts in determining just compensation. Moreover, while the LBP valued the land based on the formula provided for in DAR AO No. 11, series of 1994, this valuation was too low and, therefore, confiscatory.

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[14] 327 Phil. 1047 (1996).

[15] *Rollo*, pp. 66-84.

[16] *Id.* at 41.

The CA thus affirmed the RTC's valuation of the 10 hectares of commercial land at ₱100,000.00 per hectare, and the remaining 476 hectares at ₱32,000.00 per hectare.

THE PETITION

The LBP argues that the CA committed a serious error of law when it failed to apply the mandatory formula for determining just compensation fixed in DAR AO No. 11, series of 1994. In fixing the just compensation for the subject landholdings at ₱16,232,000.00, the CA adopted the values fixed by the SAC, despite the fact that the valuation was not based on law. According to the LBP, land taken pursuant to the State's agrarian reform program involves both the exercise of the State's power of eminent domain and the police power of the State. Consequently, the just compensation for land taken for agrarian reform should be less than the just compensation given in the ordinary exercise of eminent domain.

In contrast, Honeycomb Farms maintains that the DAR AOs were issued merely to serve as guidelines for the DAR and the LBP in administratively fixing the valuation to be offered by the DAR to the landowner for acceptance or rejection. However, it is not mandatory for courts to use the DAR AOs to fix just compensation as this would amount to an administrative imposition on an otherwise purely judicial function and prerogative of determination of just compensation for expropriated lands specifically reserved by the Constitution to the courts.

THE COURT'S RULING

We GRANT the LBP's petition.

Agrarian reform and the guarantee of just compensation

We begin by debunking the premise on which the LBP's main argument rests – since the taking done by the government for purposes of agrarian reform is not a traditional exercise of the power of eminent domain but one which is done in pursuance of social justice and which involves the State's police power,

the just compensation to be paid to the landowners for these parcels of agricultural land should be less than the market value of the property.

When the State exercises its inherent power of eminent domain, the Constitution imposes the corresponding obligation to compensate the landowner for the expropriated property. This principle is embodied in Section 9, Article III of the Constitution, which provides: "*Private property shall not be taken for public use without just compensation.*"

When the State exercises the power of eminent domain in the implementation of its agrarian reform program, the constitutional provision which governs is Section 4, Article XIII of the Constitution, which provides:

> Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and **subject to the payment of just compensation**. [emphasis ours]

Notably, this provision also imposes upon the State the obligation of paying the landowner compensation for the land taken, even if it is for the government's agrarian reform purposes. Specifically, the provision makes use of the phrase "just compensation," the same phrase used in Section 9, Article III of the Constitution. That the compensation mentioned here pertains to the fair and full price of the taken property is evident from the following exchange between the members of the Constitutional Commission during the discussion on the government's agrarian reform program:

> FR. BERNAS. We discussed earlier the idea of a progressive system of compensation and I must admit, that it was before I discussed it with Commissioner Monsod. I think what is confusing the matter is the fact that when we speak of progressive taxation, the bigger the tax base, the higher the rate of tax. Here, what we are saying is

that the bigger the land is, the lower the value per square meter. So, it is really regressive, not progressive.

MR. MONSOD. Yes, Madam President, it is true. It is progressive with respect to the beneficiary and regressive with respect to the landowner.

FR. BERNAS. **But is it the intention of the Committee that the owner should receive less than the market value?**

MR. MONSOD. **It is not the intention of the Committee that the owner should receive less than the just compensation.**[17] (emphases ours)

Even more to the point is the following statement made by Commissioner Jose F.S. Bengzon Jr., taken from the same discussion quoted above:

MR. BENGZON. Madam President, as we stated earlier, the term "just compensation" is as it is defined by the Supreme Court in so many cases and which we have accepted. So, there is no difference between "just compensation" as stated here in Section 5 and "just compensation" as stated elsewhere. There are no two different interpretations.[18]

Consistent with these discussions, the Court, in the definitive case of *Ass'n of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform*,[19] defined "just compensation" for parcels of land taken pursuant to the agrarian reform program as:

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that the measure is not the taker's gain but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, ample.

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[17] Record of the Constitutional Commission, Volume III, August 7, 1986, p. 17.

[18] *Id.* at 21.

[19] 256 Phil. 777, 812 (1989).

It bears repeating that the measures challenged in these petitions contemplate more than a mere regulation of the use of private lands under the police power. We deal here with an actual taking of private agricultural lands that has dispossessed the owners of their property and deprived them of all its beneficial use and enjoyment, to entitle them to the just compensation mandated by the Constitution.

More recently, we brushed aside the LBP's attempt to differentiate just compensation paid in what it terms as "traditional" exercise of eminent domain and eminent domain in the context of agrarian reform in *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines*,[20] thus:

To our mind, nothing is inherently contradictory in the public purpose of land reform and the right of landowners to receive just compensation for the expropriation by the State of their properties. That the petitioners are corporations that used to own large tracts of land should not be taken against them. As Mr. Justice Isagani Cruz eloquently put it:

> [S]ocial justice – or any justice for that matter – is for the deserving, whether he be a millionaire in his mansion or a pauper in his hovel. It is true that, in case of reasonable doubt, we are called upon to tilt the balance in favor of the poor, to whom the Constitution fittingly extends its sympathy and compassion. But never is it justified to prefer the poor simply because they are poor, or to reject the rich simply because they are rich, for justice must always be served, for poor and rich alike, according to the mandate of the law.

Mandatory application of the DAR formula

The CA, in affirming the RTC's valuation and disregarding that of the LBP, explained its position, as follows:

A careful perusal of the assailed decision shows that after the trial court dismissed the valuation made by [Honeycomb Farms] as exorbitant and that fixed by [the LBP and the DAR] as confiscatory and therefore unconstitutional, it fixed the value of the properties

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[20] G.R. No. 164195, April 5, 2011.

at ₱100,000.00 per hectare for the portion near the Curvada market and ₱32,000.00 per hectare for the rest, taking judicial notice of the fact that the so-called Sitio Curvada, Pitago, Cataingan, just a few kilometers away from Poblacion, Cataingan, Masbate, is a commercial district. In this respect, while it is true that the trial court should have announced its intention to take judicial notice of the commercial nature of the area near the Curvada Market with an area of ten (10) hectares, under Section 3 of Rule 129 of the Rules of Court, We find, however, that the parties were afforded ample opportunity to present evidence on the nature of the subject property and were actually heard thereon. Thus, We see no error on the part of the trial court in fixing the value of the land near the Curvada Market with an area of 10 hectares at ₱1,000,000.00 after evaluating the evidence adduced by the parties. The board of commissioners constituted by the trial court to aid it in determining the just compensation for the subject properties conducted an ocular inspection of the property and thereafter made its observation that 95% of the property covered by TCT No. T-2549 and 65% of the land covered by TCT No. T-28872 are developed. [Honeycomb Farms'] witness, Engr. Calauag, taking into consideration the location of the subject property, made a comparative valuation of similar properties located in other geographical areas of the country, based on listings obtained from newspapers, advertisements, and real estate brokers. In countering the said valuation, [the LBP] and the DAR merely insisted on their own computation of the value of the lands under the guidelines set by the DAR in its administrative orders, disregarding factors such as the location of the subject property in relation to adjacent properties, as well as its nature and the actual use for which this property is devoted. The determination of just compensation logically should take into consideration as essential factor the nature of the land based on its location.

While we agree with [the LBP and the DAR] that they merely followed the guidelines set forth in the administrative orders issued by the DAR in arriving at the amount of ₱2,890,787.89, as the basis for compensation, the courts of justice are not bound by such valuation as the final determination of just compensation is a function addressed to the latter guided by factors set forth in RA 6657.[21]

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[21] *Rollo,* pp. 36-37.

The LBP disputes this ruling, maintaining that while the determination of just compensation is a judicial function, courts should take into serious consideration the facts and data gathered by the DAR, through the LBP, as the administrative agency mandated by law to make an initial determination of the valuation of the parcels of agricultural land acquired for land reform.

We agree.

That it is the RTC, sitting as a SAC, which has the power to determine just compensation for parcels of land acquired by the State, pursuant to the agrarian reform program, is made clear in Section 57 of RA 6657, which reads:

> Section 57. Special Jurisdiction. – The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act.
>
> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

To guide the RTC in this function, Section 17 of RA 6657 enumerates the factors that have to be taken into consideration to accurately determine just compensation. This provision states:

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

In *Land Bank of the Philippines v. Sps. Banal*,[22] we recognized that the DAR, as the administrative agency tasked with the implementation of the agrarian reform program, already came up with a formula to determine just compensation which incorporated the factors enumerated in Section 17 of RA 6657. We said:

> **These factors [enumerated in Section 17] have been translated into a basic formula in DAR Administrative Order No. 6, Series of 1992**, as amended by DAR Administrative Order No. 11, Series of 1994, **issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. 6657**, as amended. [emphases ours]

In *Landbank of the Philippines v. Celada*,[23] we emphasized the duty of the RTC to apply the formula provided in the applicable DAR AO to determine just compensation, stating that:

> While [the RTC] is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that these factors have been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of R.A. No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. [The] DAR [Administrative Order] precisely "filled in the details" of Section 17, R.A. No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. **The [RTC] was at no liberty to disregard the formula which was devised to implement the said provision**.
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> It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. **As such, courts cannot ignore administrative issuances especially when, as in this case, its**

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[22] 478 Phil. 701, 710 (2004).

[23] 515 Phil. 467, 478-479 (2006).

validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same. [emphases ours]

We reiterated the mandatory application of the formula in the applicable DAR administrative regulations in *Land Bank of the Philippines v. Lim*,[24] *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*,[25] and *Land Bank of the Philippines v. Barrido*.[26] In *Barrido*, we were explicit in stating that:

> While the determination of just compensation is essentially a judicial function vested in the RTC acting as a Special Agrarian Court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. **Special Agrarian Courts are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it.** The courts cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation.[27] (emphases ours)

These rulings plainly impose on the RTC the duty to apply the formula laid down in the pertinent DAR administrative regulations to determine just compensation. Clearly, the CA and the RTC acted with grievous error when they disregarded the formula laid down by the DAR, and chose instead to come up with their own basis for the valuation of the subject land.

Hearing necessary before RTC takes judicial notice of nature of land

Apart from disregarding the formula found in the applicable DAR AO, the RTC, and, correspondingly, the CA, when it affirmed the trial court, committed further error in concluding

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[24] G.R. No. 171941, August 2, 2007, 529 SCRA 129

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

[26] G.R. No. 183688, August 18, 2010, 628 SCRA 454.

[27] *Id.* at 459-460.

that the 10 hectares of the subject property is commercial land after taking judicial notice of the fact that this portion of land is near Sitio Curvada, Pitago, Cataingan, a commercial district.

While the lower court is not precluded from taking judicial notice of certain facts, it must exercise this right within the clear boundary provided by Section 3, Rule 129 of the Rules of Court, which provides:

> Section 3. *Judicial notice, when hearing necessary*. – During the trial, the court, on its own initiative, or on request of a party, may announce its intention to take judicial notice of any matter and **allow the parties to be heard** thereon.
>
> After the trial, and before judgment or on appeal, the proper court, on its own initiative, or on request of a party, may take judicial notice of any matter and allow the parties to be heard thereon if such matter is decisive of a material issue in the case. [emphasis ours]

The classification of the land is obviously essential to the valuation of the subject property, which is the very issue in the present case. The parties should thus have been given the opportunity to present evidence on the nature of the property before the lower court took judicial notice of the commercial nature of a portion of the subject landholdings. As we said in *Land Bank of the Phils. v. Wycoco*:[28]

> The power to take judicial notice is to be exercised by courts with caution especially where the case involves a vast tract of land. Care must be taken that the requisite notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative. To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. This is because the court assumes that the matter is so notorious that it will not be disputed. But judicial notice is not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action.

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[28] 464 Phil. 83, 97-98 (2004).

In these lights, we find that a remand of this case to the court of origin is necessary for the determination of just compensation, in accordance with the formula stated in DAR AO No. 6, series of 1992, as amended by DAR AO No. 11, series of 1994, which are the applicable issuances on fixing just compensation.

Payment through trust account

As a final point, we have not failed to notice that the LBP in this case made use of trust accounts to pay Honeycomb Farms. In *Land Bank of the Phil. v. CA*,[29] this Court struck down as void DAR Administrative Circular No. 9, Series of 1990, providing for the opening of trust accounts in lieu of the deposit in cash or in bonds contemplated in Section 16(e) of RA 6657. We said:

> It is very explicit x x x [from Section 16(e)] that the deposit must be made only in "cash" or in "LBP bonds." Nowhere does it appear nor can it be inferred that the deposit can be made in any other form. If it were the intention to include a "trust account" among the valid modes of deposit, that should have been made express, or at least, qualifying words ought to have appeared from which it can be fairly deduced that a "trust account" is allowed. In sum, there is no ambiguity in Section 16(e) of RA 6657 to warrant an expanded construction of the term "deposit."
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> x x x x x x x x x

In the present suit, the DAR clearly overstepped the limits of its power to enact rules and regulations when it issued Administrative Circular No. 9. There is no basis in allowing the opening of a trust account in behalf of the landowner as compensation for his property because, as heretofore discussed, Section 16(e) of RA 6657 is very specific that the deposit must be made only in "cash" or in "LBP bonds." In the same vein, petitioners cannot invoke LRA Circular Nos. 29, 29-A and 54 because these implementing regulations cannot outweigh the clear provision of the law. Respondent court therefore did not commit any error in striking down Administrative Circular No. 9 for being null and void.[30]

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[29] 319 Phil. 246 (1995).

[30] *Id.* at 257-258.

As a result, the DAR issued AO No. 2, Series of 1996, converting trust accounts into deposit accounts. The pertinent portion of the AO provides:

VI. TRANSITORY PROVISIONS

x x x x x x x x x

All previously established Trust Deposits which served as the basis for the transfer of the landowner's title to the Republic of the Philippines shall likewise be converted to deposits in cash and in bonds. The Bureau of Land Acquisition and Distribution shall coordinate with the LBP for this purpose.

Recognizing that the belated conversion of the trust account into a deposit account failed to address the injustice caused to the landowner by the delay in its receipt of the just compensation due, we held in *Wycoco* that:

In light of the foregoing, the trust account opened by LBP in the name of Wycoco as the mode of payment of just compensation should be converted to a deposit account. **Such conversion should be retroactive in application in order to rectify the error committed by the DAR in opening a trust account and to grant the landowners the benefits concomitant to payment in cash or LBP bonds prior to the ruling of the Court in *Land Bank of the Philippines v. Court of Appeals***. Otherwise, petitioner's right to payment of just and valid compensation for the expropriation of his property would be violated. The interest earnings accruing on the deposit account of landowners would suffice to compensate them pending payment of just compensation.

In some expropriation cases, the Court imposed an interest of 12% per annum on the just compensation due the landowner. It must be stressed, however, that in these cases, the imposition of interest was in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance. It follows that the interest in the form of damages cannot be applied where there was prompt and valid payment of just compensation. Conversely, where there was delay in tendering a valid payment of just compensation, imposition of interest is in order. This is because the replacement of the trust account with cash or

LBP bonds did not *ipso facto* cure the lack of compensation; for essentially, the determination of this compensation was marred by lack of due process.

Accordingly, **the just compensation due Wycoco should bear 12% interest per annum from the time LBP opened a trust account in his name up to the time said account was actually converted into cash and LBP bonds deposit accounts. The basis of the 12% interest would be the just compensation that would be determined by the Special Agrarian Court upon remand of the instant case.** In the same vein, the amount determined by the Special Agrarian Court would also be the basis of the interest income on the cash and bond deposits due Wycoco from the time of the taking of the property up to the time of actual payment of just compensation.[31] (emphases ours)

In line with this ruling, the LBP is instructed to immediately convert the trust account opened in the name of Honeycomb Farms to a deposit account. Furthermore, the just compensation due Honeycomb Farms, as determined by the RTC, should bear 12% interest per annum from the time LBP opened the trust account in its name until the account is converted into cash and LBP bonds deposit accounts.

WHEREFORE, premises considered, the petition is **GRANTED**. Special Civil Case No. 4323 is **REMANDED** to the Regional Trial Court of Masbate, Masbate, Branch 48, for the determination of just compensation, based on the applicable administrative orders of the Department of Agrarian Reform, subject to a 12% interest per annum from the time the Land Bank of the Philippines opened the trust account for respondent Honeycomb Farms Corporation up to the time this account is actually converted into cash and LBP bonds deposit accounts.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

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[31] *Supra* note 28, at 99-101.

THIRD DIVISION

[G.R. No. 170098. February 29, 2012]

DANIEL O. PADUATA, *petitioner, vs.* **MANILA ELECTRIC COMPANY (MERALCO),** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; FINANCIAL ASSISTANCE MAY BE ALLOWED AS A MEASURE OF SOCIAL JUSTICE AND EXCEPTIONAL CIRCUMSTANCES; CASE AT BAR.— But as the CA found, Paduata presented no evidence other than his bare claim that MERALCO sent its notice of dismissal to someone else in Tondo. MERALCO had sent Paduata quite a number of memoranda and notices which, like the notice of dismissal, were correctly addressed to his house in Tanauan, Batangas. And he received these all. There was no reason for MERALCO to send the final notice of dismissal to some other address in Tondo, Manila. Paduata claims that shortly before MERALCO issued its notice of dismissal, it offered him separation pay, apparently to avoid a dispute with him. Considering what the Court said in *Eastern Shipping Lines, Inc. v. Sedan*, that financial assistance may be allowed as a measure of social justice and exceptional circumstances, such may be extended to Paduata who apparently suffered from recurring illness that prevented him from doing his work.

APPEARANCES OF COUNSEL

Macel G. Silvestre for petitioner.
Ennis E. Alabanza for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the need under company rules for an employee who claims absence due to illness to submit a medical

certificate when he reports for work, showing the reason for his absence.

The Facts and the Case

As the Court of Appeals (CA) summarized it, on April 24, 1986 respondent Manila Electric Company (MERALCO) hired petitioner Daniel O. Paduata as Bill Collector. Having done well in his job, MERALCO named him "One Million Man Collector." Four years later in 1990 he testified against certain company officials in an administrative case filed against a co-employee. He claimed harassment afterwards, including the filing of several administrative cases against him for which he was exonerated.[1]

MERALCO suspended Paduata on October 1, 1992 and ultimately dismissed him on December 10, 1992 for collecting a daily average of only 33 bills instead of the required 100 and for late remittance of collections in violation of MERALCO's Code on Employee Discipline.[2] On December 14, 1992 he filed a complaint for illegal suspension and underpayment against MERALCO which the Labor Arbiter decided in his favor on October 8, 1993. MERALCO appealed to the National Labor Relations Commission (NLRC), which on August 14, 1995 affirmed the Labor Arbiter's ruling. Based on this, MERALCO reinstated Paduata on its payroll on October 10, 1993 and eventually reinstated him to do actual work at its Tutuban Branch on May 21, 1997. After three months or in August 1997, MERALCO transferred him to its Pasay Branch as Bill Collector and Bill Executioner. Subsequently, MERALCO promoted him for excellent work to the position of Junior Branch Lineman with a corresponding salary increase.[3]

After a year, MERALCO transferred him to its Central Office in Manila District to do the work of Acting Stockman. He claimed that this transfer violated the provision of the company's

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[1] *Rollo*, pp. 156-157.

[2] *Id.* at 78.

[3] *Id.* at 157.

collective bargaining agreement with the union that an employee may only be transferred for promotion on the employee's written request. After his new posting, Paduata started incurring several absences due to rheumatic arthritis.[4] MERALCO averred that these absences were unauthorized and unexcused since he did not submit the required medical certificate after they were incurred.[5]

On May 19, 1999 MERALCO sent Paduata a notice to attend on May 28 an investigation of his unauthorized absences from April 28 to May 21, 1999. Paduata appeared with counsel and presented his affidavit. He said in it that his absence on April 28, 1999 was due to swollen muscles and inflamed joints caused by arthritis. On May 4 his wife called his office to inform it of his illness. On May 11 he submitted a medical certificate to his office to prove that illness. On May 22 his condition worsened due to fever and flu. On May 24 he went to MERALCO's Satellite Clinic in Manila for medical examination but was advised under a referral slip to go to John F. Cotton Hospital (Cotton Hospital) for proper medication. At the Cotton Hospital, Dr. Alcasaren advised him after examination to report for work on May 27 or 28 depending on the effect of the medication given him. Another doctor from the same hospital, Dr. Rene Duque, advised hospitalization if his condition worsened. Since Paduata's condition improved he was given a duty slip on May 27 or 28, 1999.[6]

About a month later, the company doctor, Dr. Rene Sicangco, submitted a report to Mike De Chavez, Jr., Paduata's supervisor, that Paduata went on self-quartered leave on July 5, 7, 13 and 14, 1999 but did not present a medical certificate covering those absences. In turn, De Chavez reported the matter to MERALCO's Investigation-Legal Department on July 19, 1999.[7]

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[4] *Id.*

[5] *Id.* at 253-256.

[6] *Id.* at 157-158.

[7] *Id.* at 159.

On August 11, 1999 De Chavez wrote MERALCO's Investigation-Legal Department again regarding another report from Dr. Sicangco that Paduata went on a self-quartered leave on August 2 and 3 and like before did not present the required medical certificate when he again reported for work on August 4. Later, Paduata did not report for work as well from August 24 to 30 allegedly due to rheumatic arthritis.[8]

On September 8, 1999 MERALCO held an investigation of Paduata's unauthorized and unexcused absences in violation of Section 4(e) of the Company Code on Employee Discipline that penalizes more than five days of such kinds of absences with dismissal.[9]

Paduata submitted a sworn statement in his defense, denying the charges against him and declaring that on August 23, 1999, the day before his absence from work, his immediate supervisor, Paquito De Guzman, advised him to stay at home considering a swollen ankle and difficulty in walking. On August 24 he called De Guzman on the phone and said that he could not come to work because of his arthritis. He consulted a certain Dr. Saavedra who advised a 5-day rest and issued him a medical certificate for it. Paduata claimed that a friend named Romy gave the certificate to De Guzman. Romy told him that he handed the certificate to the guard who handed it to De Guzman.

Paduata further said that he reported for work on August 30, prepared a sick report, and submitted it to De Guzman for approval. After signing it, De Guzman gave the sick report and the medical certificate back to him with the advice that he instead report for duty the following day since it was already late in the day. Paduata opted to go to the Cotton Hospital where a doctor gave him medicines and a duty slip to report the following day. He submitted a sick report and medical certificate to the Cotton Hospital after that consultation.[10]

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[8] *Id.*

[9] *Id.*

[10] *Id.* at 160-162.

Two months later on November 11, 1999 MERALCO sent Paduata a memorandum, requiring him to explain in writing within 72 hours why he should not be penalized for incurring absences on November 5 and 8 to 11, 1999. Paduata did not submit the required explanation. He contends that MERALCO sent the memorandum after he refused to accede to its demand that he file an application for Special Separation Pay.[11]

On November 15, 1999 MERALCO wrote Paduata a letter informing him of his dismissal from the service due to his absences from April 28 to May 21, July 5, 7, 13 to 14, August 2 to 3, and August 24 to 30, all in 1999, without any prior permission from his superiors. Paduata maintained, however, that he never got the notice of dismissal, the same having been sent to a certain Marcelino Paduata in Tondo, Manila.[12]

Nine months after his dismissal or on August 14, 2000, Paduata filed a complaint for illegal dismissal against MERALCO with the NLRC.[13] On April 30, 2001 the Labor Arbiter found MERALCO guilty of illegal dismissal and ordered it to reinstate Paduata to his former position without loss of seniority rights with full backwages and other benefits due him and attorney's fees.

The Labor Arbiter held that Paduata's absences were reasonable, valid and legally justified, as the same were not intentional but brought about by a recurring illness of rheumatic arthritis resulting in swollen ankle preventing him to walk.[14] Acknowledging Paduata's recurring illness, the Labor Arbiter gave MERALCO the option to pay him ₱255,000.00 as separation pay in lieu of reinstatement.[15]

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[11] *Id.* at 162.

[12] *Id.* at 162-163.

[13] *Id.* at 163.

[14] *Id.* at 165.

[15] *Id.* at 87-89.

MERALCO appealed to the NLRC.[16] On September 30, 2002 the NLRC reversed the Labor Arbiter's Decision. The NLRC found it unlikely that Paduata would call his company supervisor but not his doctor for consultation and a medical certificate. It was also not likely for that supervisor to recommend disciplinary action against him for going on leave without notice if he had indeed given such notice. It did not help Paduata that his supervisor denied advising him not to report for work because he had a swollen ankle or on another occasion because it was late in the day. The supervisor also denied instructing Paduata to prepare a sick report in lieu of a medical certificate or having received a phone call regarding his subordinate's absence from work. The NLRC also noted Paduata's failure to produce a copy of the medical certificate that Dr. Saavedra supposedly issued to him.[17] Paduata moved for reconsideration, but the NLRC denied it on June 18, 2003.

Not dissuaded, Paduata filed a petition for *certiorari* in the CA, which affirmed the NLRC Decision on July 29, 2004. The CA held that MERALCO presented evidence that it complied with the substantive and procedural requirements of dismissal, supported by documents and memoranda and that, consequently, the burden was on Paduata to prove that his absences were authorized and excused. The CA found, however, that Paduata failed to submit credible proof that he gave prior notice of his absences or that he submitted the medical certificates needed to justify them. He relied solely on his own affidavit. He did not submit the affidavits of the private physician he allegedly consulted, his wife, or Romy. The CA said that it cannot but conclude that Paduata's absences were not due to illness or that MERALCO had authorized them. Undeterred, Paduata filed a petition for review on *certiorari* before the Court.

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[16] *Id.* at 96.

[17] *Id.* at 112-114.

The Issues Presented

The issues presented in this case are:

1. Whether or not the CA erred in rejecting Paduata's defense that he submitted to MERALCO the medical certificates required of him to justify his absences without prior leave; and

2. Whether or not the CA erred in holding that MERALCO gave Paduata a notice that he had been dismissed.

The Court's Rulings

The Court finds no viable reason for overturning the decision of the CA.

One. Paduata points out that he submitted the medical certificates required of him for the absences he incurred from April 28 to May 21, 1999. In fact, MERALCO doctors from Cotton Hospital treated him on May 24, 1999 when he went there. But the issue is not whether he suffered from illness on May 24, 1999 when doctors from Cotton Hospital examined him. The issue is whether or not he complied with the notice and substantiation requirement for sick leave absence without prior notice to his employer respecting his April 28 to May 21 absences. Section 11 of the Company Code on Employee Discipline provides:[18]

The following acts shall constitute violation of this section:

1) Going on sick leave, including house confinement under the following cases:

a. Without having first personally secured previous authorization from a Company doctor or Company retained physician and failing to notify his supervisor or his absence due to illness within 24 hours from the date of such leave.

b. In the absence of prior authorization, where the circumstances involving the time of onset of the illness

[18] *Id.* at 253.

and the nature thereof directly causes physical inability of the employee to comply with subsection (1a) above, failing to submit through his relative or any representative the required medical certification from his private physician either to his supervisor or to the J. F. Cotton Hospital within 48 hours from the first date of such leave.

2) Without prior authorization or justifiable reason, extending the original period of sick leave previously authorized.

As Paduata himself admitted, although he did not report for work beginning April 28, 1999, it was not until seven days later or on May 4 that he caused his wife, contrary to the 24-hour rule above, to call his office about his inability to come to work due to arthritis. And when he returned on May 24 after being away from work for more than three weeks, he did not bother to submit a medical certificate to justify his long absence. True, he had himself examined by company physicians on May 24 but that merely proves that he suffered from arthritis on that date. It does not prove that he had suffered from that illness from April 28 to May 21, the period in question when he was absent without permission.

Parenthetically, Paduata was also absent on July 5 (Monday), 7 (Wednesday), 13 (Tuesday), and 14 (Wednesday), 1999 without prior leave yet he also did not submit the required medical certificates. These intermittent unexplained leaves were of course not subject to dismissal but they showed a pattern of disregard of company rules.

Paduata's second unexplained leaves were those he incurred from August 24 to 30, 1999, a period of five days excluding Saturday and Sunday. His defense is that his own supervisor advised him not to report for work because of swelling on one of his ankles. He consulted a private doctor, Dr. Saavedra, who issued him a medical certificate which he sent to his supervisor through a friend. Paduata also claimed that after getting himself examined by Cotton Hospital on August 30 and was given a duty slip to report for work on the following day,

he reported to his supervisor who told him to come back the following day as it was already too late for him to report for work. This Court, like the CA, is not persuaded by this defense for the same reasons it gave. His supervisor belied his claims and he was unable to substantiate the existence of Dr. Saavedra's supposed medical certificate.

Two. Paduata claims that he never received MERALCO's notice to him of dismissal from the service. He said that MERALCO sent that notice to a certain Marcelino Paduata in Tondo, Manila, rather than to him in Tanauan, Batangas, where he lived.[19]

But as the CA found, Paduata presented no evidence other than his bare claim that MERALCO sent its notice of dismissal to someone else in Tondo. MERALCO had sent Paduata quite a number of memoranda and notices which, like the notice of dismissal, were correctly addressed to his house in Tanauan, Batangas. And he received these all. There was no reason for MERALCO to send the final notice of dismissal to some other address in Tondo, Manila.

Paduata claims that shortly before MERALCO issued its notice of dismissal, it offered him separation pay, apparently to avoid a dispute with him. Considering what the Court said in *Eastern Shipping Lines, Inc. v. Sedan*,[20] that financial assistance may be allowed as a measure of social justice and exceptional circumstances, such may be extended to Paduata who apparently suffered from recurring illness that prevented him from doing his work.[21]

WHEREFORE, the Court **AFFIRMS with MODIFICATION** the July 29, 2004 decision and August 30, 2005 resolution of the Court of Appeals in CA-G.R. SP 78573, which affirmed the September 30, 2002 decision of the National Labor Relations

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[19] *Id.* at 163.

[20] 521 Phil. 61, 70 (2006).

[21] *Id.* at 70-71.

Commission in NLRC NCR CN. 30-08-03230-00 CA 029785-01. The Court **ORDERS** MERALCO to pay petitioner Daniel O. Paduata separation pay equivalent to one-half month pay for every year of service from the date of his employment on April 24, 1986.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 185582. February 29, 2012]

TUNA PROCESSING, INC., *petitioner, vs.* **PHILIPPINE KINGFORD, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATUTES; APPLICABILITY OF SPECIAL LAW (REPUBLIC ACT NO. 9285, ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004); OVER GENERAL LAW (THE CORPORATION CODE), SUSTAINED; CASE AT BAR.— In several cases, this Court had the occasion to discuss the nature and applicability of the *Corporation Code of the Philippines,* a general law, *viz-a-viz* other special laws. Thus, in *Koruga vs. Arcenas, Jr.*, this Court rejected the application of the Corporation Code and applied the New Central Bank Act. x x x Following the same principle, the *Alternative Dispute Resolution Act of 2004* shall apply in this case as the *Act,* as its title – *An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes* – would suggest, is a law especially enacted "to actively promote party autonomy in the resolution

of disputes or the freedom of the party to make their own arrangements to resolve their disputes." It specifically provides exclusive grounds available to the party opposing an application for recognition and enforcement of the arbitral award.

2. COMMERCIAL LAW; REPUBLIC ACT NO. 9285 (ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004); ANY PARTY TO A FOREIGN ARBITRATION MAY PETITION THE COURT TO RECOGNIZE AND ENFORCE A FOREIGN ARBITRAL AWARD; GROUNDS FOR OPPOSITION DO NOT INCLUDE CAPACITY TO SUE; ELUCIDATED IN CASE AT BAR.— A foreign corporation not licensed to do business in the Philippines have legal capacity to sue under the provisions of the *Alternative Dispute Resolution Act of 2004.* x x x Sec. 45 of the *Alternative Dispute Resolution Act of 2004* provides that the opposing party in an application for recognition and enforcement of the arbitral award may raise only those grounds that were enumerated under Article V of the New York Convention. x x x Clearly, not one of these exclusive grounds touched on the capacity to sue of the party seeking the recognition and enforcement of the award. Pertinent provisions of the *Special Rules of Court on Alternative Dispute Resolution,* which was promulgated by the Supreme Court, likewise support this position. Rule 13.1 of the Special Rules provides that "[a]ny party to a foreign arbitration may petition the court to recognize and enforce a foreign arbitral award." The contents of such petition are enumerated in Rule 13.5. Capacity to sue is not included. Oppositely, in the Rule on local arbitral awards or arbitrations in instances where "the place of arbitration is in the Philippines," it is specifically required that a petition "to determine any question concerning the existence, validity and enforceability of such arbitration agreement" available to the parties before the commencement of arbitration and/or a petition for "judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction" after arbitration has already commenced should state "[t]he facts showing that the persons named as petitioner or respondent have legal capacity to sue or be sued." Indeed, it is in the best interest of justice that in the enforcement of a foreign arbitral award, we deny availment by the losing party of the rule that bars foreign corporations not licensed to do business in the

Philippines from maintaining a suit in our courts. When a party enters into a contract containing a foreign arbitration clause and, as in this case, in fact submits itself to arbitration, it becomes bound by the contract, by the arbitration and by the result of arbitration, conceding thereby the capacity of the other party to enter into the contract, participate in the arbitration and cause the implementation of the result. x x x Clearly, on the matter of capacity to sue, a foreign arbitral award should be respected not because it is favored over domestic laws and procedures, but because Republic Act No. 9285 has certainly erased any conflict of law question.

3. REMEDIAL LAW; CIVIL PROCEDURE; STRICT APPLICATION OF THE RULES MAY BE EXCUSED WHEN THE REASON BEHIND THE RULE IS NOT PRESENT IN THE CASE; APPLICATION IN CASE AT BAR.— While we agree that petitioner failed to observe the principle of hierarchy of courts, which, under ordinary circumstances, warrants the outright dismissal of the case, we opt to relax the rules following the pronouncement in *Chua v. Ang*, to wit: [I]t must be remembered that [the principle of hierarchy of courts] generally applies to cases involving conflicting factual allegations. Cases which depend on disputed facts for decision cannot be brought immediately before us as we are not triers of facts. A *strict application* of this rule may be excused when the reason behind the rule is not present in a case, as in the present case, where the issues are not factual but purely legal. In these types of questions, this Court has the ultimate say so that we merely abbreviate the review process if we, because of the unique circumstances of a case, choose to hear and decide the legal issues outright. Moreover, the novelty and the paramount importance of the issue herein raised should be seriously considered. Surely, there is a need to take cognizance of the case not only to guide the bench and the bar, but if only to strengthen arbitration as a means of dispute resolution, and uphold the policy of the State embodied in the *Alternative Dispute Resolution Act of 2004.*

APPEARANCES OF COUNSEL

Bengson Negre Untalan for petitioner.
Law Firm of Villanueva Nuñez & Associates for respondent.

D E C I S I O N

PEREZ, ***J.*:**

Can a foreign corporation not licensed to do business in the Philippines, but which collects royalties from entities in the Philippines, sue here to enforce a foreign arbitral award?

In this *Petition for Review on Certiorari under Rule 45*,[1] petitioner Tuna Processing, Inc. (TPI), a foreign corporation not licensed to do business in the Philippines, prays that the Resolution[2] dated 21 November 2008 of the Regional Trial Court (RTC) of Makati City be declared void and the case be remanded to the RTC for further proceedings. In the assailed Resolution, the RTC dismissed petitioner's *Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award*[3] against respondent Philippine Kingford, Inc. (Kingford), a corporation duly organized and existing under the laws of the Philippines,[4] on the ground that petitioner lacked legal capacity to sue.[5]

The Antecedents

On 14 January 2003, Kanemitsu Yamaoka (hereinafter referred to as the "licensor"), co-patentee of U.S. Patent No. 5,484,619, Philippine Letters Patent No. 31138, and Indonesian Patent No. ID0003911 (collectively referred to as the "Yamaoka Patent"),[6] and five (5) Philippine tuna processors, namely, Angel

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[1] *Rollo*, pp. 36-59.

[2] *Id.* at 65-75. Penned by Judge Cedrick O. Ruiz, Regional Trial Court, Branch 61, Makati City.

[3] *Id.* at 105-113.

[4] *Id.* at 41. *Petition for Review on Certiorari under Rule 45*.

[5] *Id.* at 72-75. Resolution dated 21 November 2008 of the RTC.

[6] The Yamaoka Patent pertains to "the extra-low temperature smoking process using filtered smoke on fresh tuna which prevents the discoloration of the tuna and ensures its freshness during the frozen state." *Id.* at 41. *Petition for Review on Certiorari under Rule 45*.

Seafood Corporation, East Asia Fish Co., Inc., Mommy Gina Tuna Resources, Santa Cruz Seafoods, Inc., and respondent Kingford (collectively referred to as the "sponsors"/"licensees")[7] entered into a Memorandum of Agreement (MOA),[8] pertinent provisions of which read:

1. **Background and objectives.** The Licensor, co-owner of U.S.Patent No. 5,484,619, Philippine Patent No. 31138, and Indonesian Patent No. ID0003911 xxx wishes to form an alliance with Sponsors for purposes of enforcing his three aforementioned patents, granting licenses under those patents, and collecting royalties.

   The Sponsors wish to be licensed under the aforementioned patents in order to practice the processes claimed in those patents in the United States, the Philippines, and Indonesia, enforce those patents and collect royalties in conjunction with Licensor.

x x x x x x x x x

4. **Establishment of Tuna Processors, Inc.** The parties hereto agree to the establishment of Tuna Processors, Inc. ("TPI"), a corporation established in the State of California, in order to implement the objectives of this Agreement.

5. **Bank account.** TPI shall open and maintain bank accounts in the United States, which will be used exclusively to deposit funds that it will collect and to disburse cash it will be obligated to spend in connection with the implementation of this Agreement.

6. **Ownership of TPI.** TPI shall be owned by the Sponsors and Licensor. Licensor shall be assigned one share of TPI for the purpose of being elected as member of the board of directors. The remaining shares of TPI shall be held by the Sponsors according to their respective equity shares.[9]

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[7] *Id.* at 40. *Petition for Review on Certiorari under Rule 45*.

[8] *Id.* at 76-83.

[9] *Id.* at 76-77.

The parties likewise executed a Supplemental Memorandum of Agreement[10] dated 15 January 2003 and an Agreement to Amend Memorandum of Agreement[11] dated 14 July 2003.

Due to a series of events not mentioned in the petition, the licensees, including respondent Kingford, withdrew from petitioner TPI and correspondingly reneged on their obligations.[12] Petitioner submitted the dispute for arbitration before the International Centre for Dispute Resolution in the State of California, United States and won the case against respondent.[13] Pertinent portions of the award read:

13.1 Within thirty (30) days from the date of transmittal of this Award to the Parties, pursuant to the terms of this award, the total sum to be paid by **RESPONDENT KINGFORD** to **CLAIMANT TPI**, is the sum of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND EIGHT HUNDRED FORTY SIX DOLLARS AND TEN CENTS ($1,750,846.10).**
(A) For breach of the **MOA** by not paying past due assessments, **RESPONDENT KINGFORD** shall pay **CLAIMANT** the total sum of **TWO HUNDRED TWENTY NINE THOUSAND THREE HUNDRED AND FIFTY FIVE DOLLARS AND NINETY CENTS ($229,355.90)** which is 20% of **MOA** assessments since September 1, 2005[;]

(B) For breach of the **MOA** in failing to cooperate with **CLAIMANT TPI** in fulfilling the objectives of the **MOA, RESPONDENT KINGFORD** shall pay **CLAIMANT** the total sum of **TWO HUNDRED SEVENTY ONE THOUSAND FOUR HUNDRED NINETY DOLLARS AND TWENTY CENTS ($271,490.20)**[;][14] **and**

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[10] *Id.* at 84-85.

[11] *Id.* at 87-89.

[12] *Id.* at 42. *Petition for Review on Certiorari under Rule 45.*

[13] *Id.* at 93-99. Award of Arbitrator dated 26 July 2007. *Id.* at 103-104. Disposition of Application for Modification of Award of Arbitrators dated 13 September 2007.

[14] *Id.* at 103. Pursuant to the Disposition of Application for Modification of Award of Arbitrators dated 13 September 2007, which modified the Award of Arbitrator dated 26 July 2007.

(C) For violation of **THE LANHAM ACT** and infringement of the **YAMAOKA 619 PATENT, RESPONDENT KINGFORD** shall pay **CLAIMANT** the total sum of **ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS ($1,250,000.00)**.
x x x

x x x x x x x x x x x[15]

To enforce the award, petitioner TPI filed on 10 October 2007 a *Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award* before the RTC of Makati City. The petition was raffled to Branch 150 presided by Judge Elmo M. Alameda.

At Branch 150, respondent Kingford filed a Motion to Dismiss.[16] After the court denied the motion for lack of merit,[17] respondent sought for the inhibition of Judge Alameda and moved for the reconsideration of the order denying the motion.[18] Judge Alameda inhibited himself notwithstanding "[t]he unfounded allegations and unsubstantiated assertions in the motion."[19] Judge Cedrick O. Ruiz of Branch 61, to which the case was re-raffled, in turn, granted respondent's Motion for Reconsideration and dismissed the petition on the ground that the petitioner lacked legal capacity to sue in the Philippines.[20]

Petitioner TPI now seeks to nullify, in this instant *Petition for Review on Certiorari under Rule 45*, the order of the trial court dismissing its *Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award*.

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[15] *Id.* at 97-98. Award of Arbitrator dated 26 July 2007.

[16] *Id.* at 184-195.

[17] *Id.* at 294-302. Order dated 20 May 2008.

[18] *Id*. at 303-326. Motion for Inhibition with Motion for Reconsideration dated 30 May 2008.

[19] *Id.* at 337-338. Order dated 11 June 2008.

[20] *Id.* at 65-75. Resolution dated 21 November 2008.

Issue

The core issue in this case is whether or not the court *a quo* was correct in so dismissing the petition on the ground of petitioner's lack of legal capacity to sue.

Our Ruling

The petition is impressed with merit.

The *Corporation Code of the Philippines* expressly provides:

> **Sec. 133.** ***Doing business without a license.*** – No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

It is pursuant to the aforequoted provision that the court *a quo* dismissed the petition. Thus:

> Herein plaintiff TPI's "Petition, *etc.*" acknowledges that it "is a foreign corporation established in the State of California" and "was given the exclusive right to license or sublicense the Yamaoka Patent" and "was assigned the exclusive right to enforce the said patent and collect corresponding royalties" in the Philippines. TPI likewise admits that it does not have a license to do business in the Philippines.
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> There is no doubt, therefore, in the mind of this Court that TPI has been doing business in the Philippines, but sans a license to do so issued by the concerned government agency of the Republic of the Philippines, when it collected royalties from "five (5) Philippine tuna processors[,] namely[,] Angel Seafood Corporation, East Asia Fish Co., Inc., Mommy Gina Tuna Resources, Santa Cruz Seafoods, Inc. and respondent Philippine Kingford, Inc." This being the real situation, TPI cannot be permitted to maintain or intervene in any action, suit or proceedings in any court or administrative agency of the Philippines." A priori, the "Petition, *etc.*" extant of the plaintiff TPI should be dismissed for it does not have the legal personality to sue in the Philippines.[21]

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[21] *Id.* at 72-73. Resolution dated 21 November 2008.

The petitioner counters, however, that it is entitled to seek for the recognition and enforcement of the subject foreign arbitral award in accordance with Republic Act No. 9285 (*Alternative Dispute Resolution Act of 2004*),[22] the Convention on the Recognition and Enforcement of Foreign Arbitral Awards drafted during the United Nations Conference on International Commercial Arbitration in 1958 (*New York Convention*), and the UNCITRAL Model Law on International Commercial Arbitration (*Model Law*),[23] as none of these specifically requires that the party seeking for the enforcement should have legal capacity to sue. It anchors its argument on the following:

> In the present case, enforcement has been effectively refused on a ground not found in the [*Alternative Dispute Resolution Act of* 2004], *New York Convention*, or *Model Law*. It is for this reason that TPI has brought this matter before this most Honorable Court, as it [i]s imperative to clarify whether the Philippines' international obligations and State policy to strengthen arbitration as a means of dispute resolution may be defeated by misplaced technical considerations not found in the relevant laws.[24]

Simply put, how do we reconcile the provisions of the *Corporation Code of the Philippines* on one hand, and the *Alternative Dispute Resolution Act of 2004*, the *New York Convention* and the *Model Law* on the other?

In several cases, this Court had the occasion to discuss the nature and applicability of the *Corporation Code of the Philippines*, a general law, *viz-a-viz* other special laws. Thus, in *Koruga v. Arcenas, Jr.*,[25] this Court rejected the application of the Corporation Code and applied the New Central Bank Act. It ratiocinated:

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[22] Republic Act No. 9285 approved on 2 April 2004.

[23] As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006.

[24] *Rollo*, p. 38. *Petition for Review on Certiorari under Rule 45*.

[25] G.R. No. 169053, 19 June 2009, 590 SCRA 49.

Koruga's invocation of the provisions of the Corporation Code is misplaced. In an earlier case with similar antecedents, we ruled that:

> "The Corporation Code, however, is a general law applying to all types of corporations, while the New Central Bank Act regulates specifically banks and other financial institutions, including the dissolution and liquidation thereof. As between a general and special law, the latter shall prevail – ***generalia specialibus non derogant***." (Emphasis supplied)[26]

Further, in the recent case of *Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council,*[27] this Court held:

> Without doubt, the Corporation Code is the general law providing for the formation, organization and regulation of private corporations. On the other hand, RA 6657 is the special law on agrarian reform. As between a general and special law, the latter shall prevail—*generalia specialibus non derogant*.[28]

Following the same principle, the *Alternative Dispute Resolution Act of 2004* shall apply in this case as the *Act*, as its title – *An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes* - would suggest, is a law especially enacted "to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes."[29] It specifically provides exclusive grounds

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[26] *Id.* at 68 citing *In re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., Philippine Deposit Insurance Corporation v. Bureau of Internal Revenue*, G.R. No. 158261, 18 December 2006, 511 SCRA 123, 141 further citing *Laureano v. Court of Appeals*, 381 Phil. 403, 411-412 (2000).

[27] G.R. No. 171101, 5 July 2011, 653 SCRA 154.

[28] *Id.* at 244 citing *Koruga v. Arcenas, Jr.*, *supra* note 24.

[29] Sec. 2, Republic Act No. 9285.

available to the party opposing an application for recognition and enforcement of the arbitral award.[30]

Inasmuch as the *Alternative Dispute Resolution Act of 2004*, a municipal law, applies in the instant petition, we do not see the need to discuss compliance with international obligations under the *New York Convention* and the *Model Law*. After all, both already form part of the law.

In particular, the *Alternative Dispute Resolution Act of 2004* incorporated the *New York Convention* in the Act by specifically providing:

> SEC. 42. *Application of the New York Convention.* – The New York Convention shall govern the recognition and enforcement of arbitral awards covered by the said Convention.
>
> x x x x x x x x x
>
> SEC. 45. *Rejection of a Foreign Arbitral Award.* – A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the procedural rules to be promulgated by the Supreme Court only on those grounds enumerated under Article V of the New York Convention. Any other ground raised shall be disregarded by the regional trial court.

It also expressly adopted the *Model Law*, to wit:

> Sec. 19. *Adoption of the Model Law on International Commercial Arbitration.* International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the "Model Law") adopted by the United Nations Commission on International Trade Law on June 21, 1985 xxx."

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[30] Secs. 42 and 45, Republic Act No. 9285, which adopted the New York Convention; and Sec. 19, Republic Act No. 9285, which adopted the entire provisions of the Model Law.

Now, does a foreign corporation not licensed to do business in the Philippines have legal capacity to sue under the provisions of the *Alternative Dispute Resolution Act of 2004*? We answer in the affirmative.

Sec. 45 of the *Alternative Dispute Resolution Act of 2004* provides that the opposing party in an application for recognition and enforcement of the arbitral award may raise only those grounds that were enumerated under Article V of the *New York Convention*, to wit:

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Clearly, not one of these exclusive grounds touched on the capacity to sue of the party seeking the recognition and enforcement of the award.

Pertinent provisions of the *Special Rules of Court on Alternative Dispute Resolution*,[31] which was promulgated by the Supreme Court, likewise support this position.

Rule 13.1 of the Special Rules provides that "[a]ny party to a foreign arbitration may petition the court to recognize and enforce a foreign arbitral award." The contents of such petition are enumerated in Rule 13.5.[32] Capacity to sue is not included. Oppositely, in the Rule on local arbitral awards or arbitrations in instances where "the place of arbitration is in the Philippines,"[33] it is specifically required that a petition "to determine any question concerning the existence, validity and enforceability of such

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[31] A.M. No. 07-11-08-SC dated 1 September 2009.

[32] RULE 13.5. *Contents of petition.* – The petition shall state the following:
a. The addresses of the parties to arbitration;
b. In the absence of any indication in the award, the country where the arbitral award was made and whether such country is a signatory to the New York Convention; and
c. The relief sought.
Apart from other submissions, the petition shall have attached to it the following:
a. An authentic copy of the arbitration agreement; and
b. An authentic copy of the arbitral award.
If the foreign arbitral award or agreement to arbitrate or submission is not made in English, the petitioner shall also attach to the petition a translation of these documents into English. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent. A.M. No. 07-11-08-SC dated 1 September 2009.

[33] Rule 3.1, A.M. No. 07-11-08-SC dated 1 September 2009.

arbitration agreement"[34] available to the parties before the commencement of arbitration and/or a petition for "judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction"[35] after arbitration has already commenced should state "[t]he facts showing that the persons named as petitioner or respondent have legal capacity to sue or be sued."[36]

Indeed, it is in the best interest of justice that in the enforecement of a foreign arbitral award, we deny availment by the losing party of the rule that bars foreign corporations not licensed to do business in the Philippines from maintaining a suit in our

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[34] Rule 3.2, A.M. No. 07-11-08-SC dated 1 September 2009.

[35] Rule 3.12, A.M. No. 07-11-08-SC dated 1 September 2009.

[36] In relation to a petition "to determine any question concerning the existence, validity and enforceability of such arbitration agreement" available to the parties before the commencement of arbitration, Rule 3.6 provides:

RULE 3.6. *Contents of petition.* – The verified petition shall state the following:

a. The facts showing that the persons named as petitioner or respondent have legal capacity to sue or be sued;

b. The nature and substance of the dispute between the parties;

c. The grounds and the circumstances relied upon by the petitioner to establish his position; and

d. The relief/s sought.

Apart from other submissions, the petitioner must attach to the petition an authentic copy of the arbitration agreement.

In relation to a petition for "judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction" after arbitration has already commenced, Rule 3.16 reads:

RULE 3.16. *Contents of petition.* – The petition shall state the following:

a. The facts showing that the person named as petitioner or respondent has legal capacity to sue or be sued;

b. The nature and substance of the dispute between the parties;

c. The grounds and circumstances relied upon by the petitioner; and

d. The relief/s sought.

In addition to the submissions, the petitioner shall attach to the petition a copy of the request for arbitration and the ruling of the arbitral tribunal.

The arbitrators shall be impleaded as nominal parties to the case and shall be notified of the progress of the case.

courts. When a party enters into a contract containing a foreign arbitration clause and, as in this case, in fact submits itself to arbitration, it becomes bound by the contract, by the arbitration and by the result of arbitration, conceding thereby the capacity of the other party to enter into the contract, participate in the arbitration and cause the implementation of the result. Although not on all fours with the instant case, also worthy to consider is the wisdom of then Associate Justice Flerida Ruth P. Romero in her Dissenting Opinion in *Asset Privatization Trust v. Court of Appeals*,[37] to wit:

> xxx Arbitration, as an alternative mode of settlement, is gaining adherents in legal and judicial circles here and abroad. If its tested mechanism can simply be ignored by an aggrieved party, one who, it must be stressed, voluntarily and actively participated in the arbitration proceedings from the very beginning, it will destroy the very essence of mutuality inherent in consensual contracts.[38]

Clearly, on the matter of capacity to sue, a foreign arbitral award should be respected not because it is favored over domestic laws and procedures, but because Republic Act No. 9285 has certainly erased any conflict of law question.

Finally, even assuming, only for the sake of argument, that the court *a quo* correctly observed that the *Model Law*, not the *New York Convention*, governs the subject arbitral award,[39]

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[37] G.R. No. 121171, 29 December 1998, 300 SCRA 579.

[38] *Id.* at 631.

[39] In its Resolution dated 21 November 2008, the court *a quo* observed: "This reliance by TPI solely upon the New York Convention in conjunction with Section 42 of Republic Act No. 9285 may not be correct. It is apparent from the 'Award of Arbitrator' that the 'International Centre [f]or Dispute Resolution' is a 'Commercial Arbitration Tribunal' and hence, it is engaged in commercial arbitration. Under the third sentence of Section 40 of Republic Act No. 9285, '[t]he recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law [the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985]' and not the so-called New York Convention. *Rollo,* p. 74.

petitioner may still seek recognition and enforcement of the award in Philippine court, since the *Model Law* prescribes substantially identical exclusive grounds for refusing recognition or enforcement.[40]

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[40] Article 36 of the Model Law provides:

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) xxx

Premises considered, petitioner TPI, although not licensed to do business in the Philippines, may seek recognition and enforcement of the foreign arbitral award in accordance with the provisions of the *Alternative Dispute Resolution Act of 2004*.

II

The remaining arguments of respondent Kingford are likewise unmeritorious.

First. There is no need to consider respondent's contention that petitioner TPI improperly raised a question of fact when it posited that its act of entering into a MOA should not be considered "doing business" in the Philippines for the purpose of determining capacity to sue. We reiterate that the foreign corporation's capacity to sue in the Philippines is not material insofar as the recognition and enforcement of a foreign arbitral award is concerned.

Second. Respondent cannot fault petitioner for not filing a motion for reconsideration of the assailed Resolution dated 21 November 2008 dismissing the case. We have, time and again, ruled that the prior filing of a motion for reconsideration is not required in *certiorari* under Rule 45.[41]

Third. While we agree that petitioner failed to observe the principle of hierarchy of courts, which, under ordinary circumstances, warrants the outright dismissal of the case,[42] we opt to relax the rules following the pronouncement in *Chua v. Ang*,[43] to wit:

> [I]t must be remembered that [the principle of hierarchy of courts] generally applies to cases involving conflicting factual allegations. Cases which depend on disputed facts for decision cannot be brought

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[41] *San Miguel Corporation v. Layoc, Jr.*, G.R. No. 149640, 19 October 2007, 537 SCRA 77, 91; *Bases Conversion and Development Authority v. Uy*, G.R. No. 144062, 2 November 2006, 506 SCRA 524, 534; and *Paa v. CA*, G.R. No. 126560, 4 December 1997, 282 SCRA 448.

[42] *Catly v. Navarro*, G.R. No. 167239, 5 May 2010, 620 SCRA 151, 193.

[43] G.R. No. 156164, 4 September 2009, 598 SCRA 229.

immediately before us as we are not triers of facts.[44] A *strict application* of this rule may be excused when the reason behind the rule is not present in a case, as in the present case, where the issues are not factual but purely legal. In these types of questions, this Court has the ultimate say so that we merely abbreviate the review process if we, because of the unique circumstances of a case, choose to hear and decide the legal issues outright.[45]

Moreover, the novelty and the paramount importance of the issue herein raised should be seriously considered.[46] Surely, there is a need to take cognizance of the case not only to guide the bench and the bar, but if only to strengthen arbitration as a means of dispute resolution, and uphold the policy of the State embodied in the *Alternative Dispute Resolution Act of 2004*, to wit:

> Sec. 2. *Declaration of Policy.* – It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets. xxx

Fourth. As regards the issue on the validity and enforceability of the foreign arbitral award, we leave its determination to the court *a quo* where its recognition and enforcement is being sought.

Fifth. Respondent claims that petitioner failed to furnish the court of origin a copy of the motion for time to file petition for

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[44] *Id.* at 238 citing *Mangaliag v. Catubig-Pastoral*, G.R. No. 143951, 25 October 2005, 474 SCRA 153,161; *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, G.R. Nos. 155001, 155547 and 155661, 21 January 2004, 420 SCRA 575, 584.

[45] *Id.*

[46] *La Bugal-B'laan Tribal Association, Inc. v. Ramos*, G.R. No. 127882, 27 January 2004, 421 SCRA 148, 183.

review on *certiorari* before the petition was filed with this Court.[47] We, however, find petitioner's reply in order. Thus:

> 26. Admittedly, reference to "Branch 67" in petitioner TPI's "Motion for Time to File a Petition for Review on *Certiorari* under Rule 45" is a typographical error. As correctly pointed out by respondent Kingford, the order sought to be assailed originated from Regional Trial Court, Makati City, Branch 61.
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> 27. xxx Upon confirmation with the Regional Trial Court, Makati City, Branch 61, a copy of petitioner TPI's motion was received by the Metropolitan Trial Court, Makati City, Branch 67. On 8 January 2009, the motion was forwarded to the Regional Trial Court, Makati City, Branch 61.[48]

All considered, petitioner TPI, although a foreign corporation not licensed to do business in the Philippines, is not, for that reason alone, precluded from filing the *Petition for Confirmation, Recognition, and Enforcement of Foreign Arbitral Award* before a Philippine court.

WHEREFORE, the Resolution dated 21 November 2008 of the Regional Trial Court, Branch 61, Makati City in Special Proceedings No. M-6533 is hereby **REVERSED** and **SET ASIDE**. The case is **REMANDED** to Branch 61 for further proceedings.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.*, concur.

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[47] *Rollo*, pp. 427-428. Comment/Opposition on the petition dated 1 April 2009.

[48] *Id.* at 459. Reply to "COMMENT/OPPOSITION (Re: Petitoner Tuna Processing, Inc.'s Petition for Review on *Certiorari* Under Rule 45 dated January 23, 2009)" dated 1 April 2009.

FIRST DIVISION

[G.R. No. 188132. February 29, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSEMARIE MAGUNDAYAO *y* ALEJANDRO *alias* "ROSE",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF *SHABU*; ELEMENTS.— It was held in *People v. Hernandez* that "[t]o secure a conviction for **illegal sale** of *shabu*, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof." *People v. Naquita* further adds that "[w]hat is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*." The above elements have been sufficiently established by the prosecution. PO2 Memoracion was the poseur-buyer and he identified the accused-appellant as the seller. The object of the sale was the sachet containing eight centigrams (0.08 grams) of *shabu*, which bore the marking "RAM-1", and the consideration paid by the poseur-buyer therefor consisted of the ₱200 marked money. PO2 Memoracion also categorically stated that the object of the sale was in fact handed to him by the accused-appellant after he gave her the marked money.

2. ID.; ID.; ID.; IMPOSABLE PENALTY.— In fine, the evidence for the prosecution established that during a buy-bust operation, the accused-appellant was caught *in flagrante delicto* in the act of selling a plastic sachet of *shabu* to a police officer, who acted as a poseur-buyer, and was thereafter caught in possession of another sachet of *shabu*. Thus, the guilt of the accused-appellant of the crimes charged had been proven in the instant case beyond reasonable doubt. Under Section 5, Article II of Republic Act No. 9165, the crime of unauthorized

sale of *shabu*, regardless of the quantity and purity thereof, is punishable with life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00). Hence, the penalty of life imprisonment and a fine of ₱500,000.00 was correctly imposed by the RTC and the Court of Appeals on the accused-appellant Rosemarie Magundayao *y* Alejandro for illegal sale of *shabu*.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— As to the charge of **illegal possession** of dangerous drugs, *People v. Lazaro, Jr.* provides that the elements thereof are: "(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug." That the accused-appellant knowingly carried the illegal drug *shabu* without authority was likewise proven in this case. PO3 Arago and PO2 Memoracion both testified to the fact that after the latter effected the arrest of the accused-appellant, she was ordered to empty her pocket. When she did so, she produced another plastic sachet, which PO2 Memoracion marked as "RAM-2". The chemistry report of the forensic chemist P/Insp. De Guzman confirmed that the said sachet contained ten decigrams (0.10 grams) of *shabu*.

4. ID.; ID.; ID.; FOR LESS THAN FIVE (5) GRAMS OF *SHABU*; IMPOSABLE PENALTY.— On the other hand, in accordance with Section 11, Article II of Republic Act No. 9165, the crime of illegal possession of less than five (5) grams of *shabu* is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00). Thus, the RTC and the Court of Appeals properly penalized the accused-appellant Rosemarie Magundayao *y* Alejandro with imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and twenty-one (21) days, as maximum, as well as a fine of ₱300,000.00, since the said penalties are within the range of penalties prescribed by the above provision.

5. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; AN INCONSISTENCY WHICH HAS NOTHING TO DO

WITH THE ELEMENTS OF THE CRIME CANNOT BE A GROUND FOR THE ACQUITTAL OF THE ACCUSED.— As regards the alleged inconsistencies in the testimonies of PO2 Memoracion and PO3 Arago, the Court finds the same unpersuasive. *People v. Lazaro* states that "[f]or a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused."

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO–DE CASTRO, *J.*:

For review of the Court is the Decision[1] of the Court of Appeals dated December 19, 2008 in CA-G.R. CR. No. 02899, which affirmed the Joint Decision[2] dated June 27, 2007 of the Regional Trial Court (RTC) of Pasig City, Branch 267, in Criminal Case Nos. 14061-D and 14062-D. In the said cases, accused-appellant Rosemarie Magundayao *y* Alejandro *alias* Rose was found guilty of the crimes of illegal sale and possession of methamphetamine hydrochloride, more popularly known as *shabu*, under Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On April 18, 2005, two separate informations were filed against the accused-appellant for violations of the provisions of Republic Act No. 9165.

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[1] CA *rollo*, pp. 93-109; penned by Associate Justice Rosmari D. Carandang with Associate Justices Conrado M. Vasquez, Jr. and Mariflor P. Punzalan Castillo, concurring.

[2] *Id.* at 9-19; penned by Judge Florito S. Macalino.

In Criminal Case No. 14061-D, the accused-appellant allegedly violated the first paragraph of Section 5,[3] Article II of Republic Act No. 9165 in the following manner:

That on or about the 14th day of April, 2005, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell any dangerous drug, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur-buyer PO1 Rey B. Memoracion 0.08 gram of white crystalline substance contained in one (1) heat-sealed transparent sachet, which substance was found positive to the test for "Methylamphetamine hydrochloride", a dangerous drug, in violation of the above-cited law.[4]

The accusatory portion of the second information pertaining to Criminal Case No. 14062-D for violation of Section 11,[5] Article II of the same law, states:

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[3] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[4] Records, p. 1.

[5] SEC. 11. *Possession of Dangerous Drugs.* – x x x

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

That on or about the 14th day of April, 2005, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and knowingly have in her possession, custody and control 0.10 gram of white crystalline substance contained in one (1) heat-sealed transparent sachet, which substance was found positive to the test for "Methylamphetamine hydrochloride" or commonly known as "*shabu*", a dangerous drug, in violation of the above-cited law.[6]

Upon her arraignment on May 23, 2005, the accused-appellant entered pleas of "not guilty" to each of the charges.[7]

Thereafter, joint trial of the cases ensued.[8]

The prosecution called to the witnesses stand: (1) Police Officer III (PO3) Danilo B. Arago and (2) Police Officer II (PO2) Rey B. Memoracion, both members of the Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF) of the Taguig City Police Station. On the other hand, the defense presented the lone testimony of accused-appellant Rosemarie Magundayao *y* Alejandro.

PO3 Danilo B. Arago testified that on April 14, 2005, at around 5:30 p.m., he was at the office of the SAID-SOTF when a reliable informant (*pinagkakatiwalaang impormante*) came in and gave information about a certain *alias* Rose who was peddling illegal drugs, particularly *shabu*, along M. L. Quezon Street, at the corner of Paso Street, Bagumbayan,[9] Taguig City.[10] PO3 Arago said that the information was relayed to the leader of his team, Police Chief Inspector (P/Chief Insp.) Romeo Paat, who conducted a briefing with the informant. The members of

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[6] Records, pp. 3-4.

[7] *Id.* at 28.

[8] The prosecution moved for a joint trial on November 22, 2006 and the same was ordered by the RTC on even date. (TSN, November 22, 2006.)

[9] Also referred to as "Pazzo Street" and "Bagong Bayan," respectively, in other parts of the records.

[10] Records, pp. 52-53.

the team present were P/Chief Insp. Paat, PO3 Antonio Reyes, PO2 Memoracion[11] and PO3 Arago himself. A buy-bust operation was planned whereby PO2 Memoracion was designated as the poseur-buyer and he was to act as the back-up. He saw P/Chief Insp. Paat give the buy-bust money to PO2 Memoracion, consisting of two pieces of ₱100 bills, and the latter signed the initials "RBM" on the upper right hand of the bills. The team also faxed a pre-coordination report to the Philippine Drug Enforcement Agency (PDEA).[12]

PO3 Arago related that the team then proceeded to the subject area and arrived there at 8:30 p.m. They parked their vehicle along M. L. Quezon Street, around a hundred meters from Paso Street. PO2 Memoracion and the informant alighted and walked to Paso Street. The pre-arranged signal was for PO2 Memoracion to remove his bull cap. When he saw PO2 Memoracion talking to the accused-appellant, PO3 Arago went out of the car and walked towards them. He situated himself at about 15 meters away from PO2 Memoracion and the accused-appellant. He saw them talking and, after a while, PO2 Memoracion handed something to the accused-appellant, who in turn took something from her short pants and handed it to PO2 Memoracion. The latter then removed his bull cap.[13]

PO3 Arago stated that he thereafter ran to the place where PO2 Memoracion was standing. The latter already effected the arrest of the accused-appellant and ordered her to empty the contents of her right front pocket. They saw another plastic sachet, which they believed contained *shabu*, and the buy-bust money. PO2 Memoracion told him to place the accused-appellant in handcuffs and the former marked the evidence obtained. PO3 Arago said that he was able to see the object of the buy-bust in the custody of PO2 Memoracion, which was a small plastic sachet containing white crystalline substance suspected

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[11] In the testimony of PO3 Arago (Records, pp. 50-68), PO2 Rey B. Memoracion was referred to as PO1 Memoracion.

[12] Records, pp. 53-56.

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

as *shabu*. He was beside PO2 Memoracion while the latter was marking the evidence. The marking "RAM-1" was placed at the plastic sachet subject of the buy-bust and the marking "RAM-2" was placed at the other plastic sachet that was also confiscated from the accused-appellant. PO3 Arago stated that he saw PO2 Memoracion take custody of the two plastic sachets and brought the same to the police station. They then turned over the plastic sachets to the crime laboratory. After the accused-appellant was arrested, she was brought to the police station.[14]

PO2 Memoracion provided a similar picture of the events that allegedly transpired in the afternoon of April 14, 2005. He testified that, at that time, an informant indeed came to their office and told them about a female individual who was selling illegal drugs at Bagumbayan corner Paso Street, Taguig City. The informant talked to P/Chief Insp. Paat and the latter set up a plan to conduct a buy-bust operation. PO2 Memoracion was designated as the poseur-buyer. He was tasked to give the marked money, consisting of two pieces of ₱100 bills, to the drug peddler. He stated that he was the one who placed the markings on the money, writing thereon his initials "RBM" at the upper right portion of the serial number. The team submitted a pre-operation report to the PDEA and the latter gave a certification of coordination. The plan was for the informant to assist him in buying the illegal drugs from the drug peddler. Should the sale be consummated, they will immediately arrest the said person. The pre-arranged signal for the arrest was the act of him removing his cap.[15]

PO2 Memoracion narrated that, after the preparations were completed, the team headed to Bagumbayan corner Paso Street, Taguig City. When they got there, he and the informant took a walk, with the other members of the team following them. When the informant saw the accused-appellant, they talked and PO2 Memoracion was introduced as a friend of the informant who wanted to buy *shabu*. They were then facing each other

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[14] *Id.* at 59-62.

[15] TSN, November 22, 2006, pp. 5-9.

about a foot away. The accused-appellant asked PO2 Memoracion how much he was going to buy and he answered that he would buy only ₱200 worth of *shabu*. He handed to her the ₱200 marked money and she accepted the same. She then pulled out from her pocket one transparent plastic sachet containing white crystalline powder and gave it to him. After he received the plastic sachet, he made the pre-arranged signal of removing his bull cap.[16]

PO2 Memoracion said that he afterwards saw PO3 Arago, followed by PO3 Reyes, coming towards his location. He forthwith informed the accused-appellant that he was a police officer and showed her his ID. He told her not to run and that he was arresting her for selling illegal drugs. When he requested her to bring out the contents of her pocket, she brought out another plastic sachet with suspected *shabu* and the buy-bust money, which he both confiscated. He then put markings on the two plastic sachets. He put therein the initials of the accused, "RAM". The *shabu* subject of the sale was marked as "RAM-1" and the other sachet was marked as "RAM-2". He also appraised the accused-appellant of her constitutional rights. At the scene of the crime, he prepared an inventory of the items seized, which he and the accused-appellant signed. The accused-appellant was taken to the police station, along with the plastic sachets and the marked money. Thereafter, the accused-appellant and the seized items were turned over to the investigator, SPO2 Armando Cay. The police subsequently prepared a request for laboratory examination. PO2 Memoracion then delivered the request and the suspected drug specimen to the crime laboratory. The specimen yielded a positive result for *methylamphetamine hydrochloride*.[17] Chemistry Report No. D-234-05 stated thus:

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[16] *Id.* at 10-13.

[17] *Id.* at 13-22.

SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weight:

A – (RAM-1) = 0.08 gram

B – (RAM-2) = 0.10 gram

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs. x x x.

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a dangerous drug. x x x.

CONCLUSION:

Specimen A and B contain Methylamphetamine Hydrochloride, a dangerous drug.[18]

The prosecution thereafter adduced the following documentary evidence: (1) *Pinagsamang Salaysay ng Pag-aresto at Paghaharap ng Reklamo o Demanda* (Exhibit A);[19] (2) Request for Laboratory Examination of the specimen suspected to be *shabu* (Exhibit B);[20] (3) Initial Laboratory Report, stating that the specimen submitted for examination tested positive for *methylamphetamine hydrochloride* (Exhibit C);[21] (4) Request for Physical Examination of the accused-appellant;[22] (5) Request for Drug Test of the accused-appellant;[23] (6) Physical Examination

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[18] Records, p. 141.

[19] *Id.* at 131-132.

[20] *Id.* at 133.

[21] *Id.* at 134.

[22] *Id.* at 136.

[23] *Id.* at 135.

Report;[24] (7) Certificate of Inventory (Exhibit G);[25] (8) Booking and Information Sheet;[26] (9) Pre-Operation Report/Coordination Sheet (Exhibit I);[27] (10) Certificate of Coordination (Exhibit J);[28] (11) Photocopy of the buy-bust money (Exhibit K);[29] and (12) Chemistry Report No. D-234-05, stating that the specimen submitted for examination yielded a positive result for *methylamphetamine hydrochloride* (Exhibit L).[30]

The testimony of Police Inspector Alejandro de Guzman, the forensic chemist who examined the specimen seized from the accused-appellant, was dispensed with by the parties. The counsel for the accused-appellant agreed to stipulate that De Guzman indeed examined the specimen upon the request of the police and, after the requisite examination, found it positive to the test of *methylamphetamine hydrochloride*, a dangerous drug. The findings were reflected in Chemistry Report No. D-234-05, which was prepared under oath by De Guzman and approved by his immediate supervisor Police Chief Inspector Grace M. Eustaquio. The defense counsel also stipulated that if De Guzman were to be presented as a witness, the latter would testify to the fact that he turned over to the counsel for the prosecution the drug specimen and he could identify the same if shown to him. On the other hand, the prosecution stipulated that the forensic chemist had no personal knowledge from whom the specimen was taken and under what circumstances the specimen was taken.[31]

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[24] *Id.* at 13.

[25] *Id.* at 137.

[26] *Id.* at 15.

[27] *Id.* at 138.

[28] *Id.* at 139.

[29] *Id.* at 140.

[30] *Id.* at 141.

[31] TSN, March 12, 2007, pp. 3-5.

Expectedly, the defense presented an entirely different version of the facts. The accused-appellant claimed that she was framed by the police.

The accused-appellant testified that on April 14, 2005, she was at her house at 188 Pazzo Street, Bagong Bayan, Taguig, Metro Manila. At around 6:00 p.m., she was resting when the door of their house was suddenly opened by five unidentified male persons. They did not introduce themselves to her. They told her that they were looking for a certain *alias* Luga but she told the men that she did not know this person. They then ransacked her house for about ten to fifteen minutes. The men were not able to find any illegal items at her house and they afterwards brought the accused-appellant to the Tuktukan jail. There, the men allegedly asked money from her before they could allow her to go home. She stated that it was PO2 Memoracion who tried to extort money from her. Since she did not owe them any debt, she refused to give them any money. Afterwards, she was subjected to inquest proceedings. When she was brought to the Tuktukan jail, she was not shown the evidence that were supposedly taken from her. The accused-appellant further alleged that, on the afternoon of April 14, 2005, she did not even go out of her house.[32]

The defense formally rested its case without the presentation of any documentary evidence for the accused-appellant.[33]

On June 27, 2007, the RTC rendered a Joint Decision, finding the accused-appellant guilty of the offenses charged. The pertinent portions of the judgment states:

> The substance of the prosecution's evidence is to the effect that accused Rosemarie Magundayao *y* Alejandro *alias* Rose was arrested by the police because of the existence of *shabu* [s]he sold to PO2 Rey B. Memoracion as well as the recovery of the buy-bust money from [her] possession, and the presence of another plastic sachet containing *shabu* that was also recovered from her person.

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[32] *Id.* at 10-16.

[33] Records, p. 149.

To emphasize, the prosecution witnesses in the person of PO2 Rey B. Memoracion and PO3 Danilo B. Arago positively identified accused Rosemarie Magundayao *y* Alejandro *alias* Rose as the person they apprehended on April 14, 2005 at Pazzo Street corner M.L. Quezon Avenue, Bagumbayan, Taguig, Metro Manila. That they arrested accused Rosemarie A. Magundayao because their team was able to procure *shabu* from her during the buy-bust operation they purposely conducted against the aforementioned accused.

The buy-bust money recovered by the arresting police officers from the possession of accused Rosemarie Magundayao *y* Alejandro *alias* Rose as well as the *shabu* they were able to purchase from the accused sufficiently constitute as the very *corpus delicti* of the crime of "Violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165", and the other plastic sachet containing *shabu* that was recovered from the same accused Magundayao similarly constitute as the *corpus delicti* of the crime of "Violation of Section 11, 2nd paragraph, No. 3, Article II of Republic Act No. 9165". x x x.

The testimony of PO2 Rey B. Memoracion that was corroborated by PO3 Danilo B. Arago, who have not shown and displayed any ill motive to arrest the accused, is sufficient enough to convict the accused of the crimes charged against him. x x x.[34]

As to the defense put forward by the accused-appellant, the trial court declared that:

Such allegation of the accused that her apprehension was just a result of a frame-up, as she was not really engaged in peddling *shabu* when she was arrested, cannot be given credence because she was not able to offer and show proof of any previous disagreement between her and the arresting law enforcers that may lead the police officers to concoct and hatch baseless accusations against her, or the presence of any other circumstances that may have fired up the ire of the police officers against her. x x x.

x x x x x x x x x

Moreover, there is no evidence in the record that when the accused was brought to the Inquest Prosecutor for the requisite inquest of the charge against the accused, the latter never complained to the

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[34] *Id.* at 213-214.

Inquest Prosecutor of the "framing-up" brazenly perpetrated by the policemen or by the police investigator. If indeed, the accused complained to the Inquest Prosecutor, surely, the same could have appropriately acted upon it.

x x x x x x x x x

To wrap up, the testimonial evidence presented by the prosecution is sufficient to convict accused Rosemarie Magundayao *y* Alejandro *alias* Rose. There can be no other prudent conclusion that can be deduced from the circumstances present in the instant cases. The evidence presented by the prosecution leads only to one fair and reasonable conclusion – that accused Rosemarie Magundayao *y* Alejandro *alias* Rose is guilty of the offenses charged.[35]

The RTC, thus, decreed:

WHEREFORE, in view of the foregoing considerations, the Court finds accused ROSEMARIE MAGUNDAYAO *y* Alejandro *alias* Rose in *Criminal Case No. 14061-D* for Violation of Section 5, 1st paragraph, Article II of Republic Act No. 9165, otherwise known as "The Comprehensive Drugs Act of 2002", ***GUILTY*** beyond reasonable doubt. Hence, accused Rosemarie Magundayao *y* Alejandro *alias* Rose is hereby sentenced to suffer LIFE IMPRISONMENT and ordered to pay a fine of FIVE HUNDRED THOUSAND PESOS (PhP500,000.00).

Moreover, accused ROSEMARIE MAGUNDAYAO *y* Alejandro *alias* Rose is also found ***GUILTY*** beyond reasonable doubt in *Criminal Case No. 14062-D* for Violation of Section 11, 2nd paragraph, No. 3, Article II of Republic Act No. 9165, otherwise known as "The Comprehensive Drugs Act of 2002". And since the quantity of methylamphetamine hydrochloride (*shabu*) found in the possession of the accused is only 0.10 gram, accused Rosemarie Magundayao *y* Alejandro *alias* Rose is hereby sentenced to suffer imprisonment ranging from TWELVE (12) YEARS and ONE (1) DAY as minimum – to – FOURTEEN (14) YEARS and TWENTY[-]ONE (21) DAYS as maximum. Accused Rosemarie Magundayao *y* Alejandro *alias* Rose is further penalized to pay a fine in the amount of THREE HUNDRED THOUSAND PESOS (PhP300,000.00).

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[35] *Id.* at 214-215.

Accordingly, the Jail Warden of the Taguig City Jail where accused Rosemarie Magundayao *y* Alejandro *alias* Rose is presently detained is hereby ordered to forthwith commit the person of convicted Rosemarie Magundayao *y* Alejandro *alias* Rose to the Correctional Institution for Women (CIW), Bureau of Corrections in Mandaluyong City, Metro Manila.

Upon the other hand, the *shabu* contained in two (2) heat-sealed transparent plastic sachets with a total weight of 0.18 gram which are the subject matter of the above-captioned cases, are hereby ordered transmitted and/or submitted to the custody of the Philippine Drug Enforcement Agency (PDEA) subject and/or pursuant to existing Rules and Regulations promulgated thereto for its proper disposition.

Costs *de oficio*.[36]

On July 17, 2007, the accused-appellant filed a Notice of Appeal,[37] which the RTC gave due course to in an Order[38] dated July 27, 2007.

On December 19, 2008, the Court of Appeals found no merit in the appeal of the accused-appellant and disposed of the same, thus:

Wherefore, premises considered, the instant appeal is denied for lack of merit, and accordingly, the assailed June 27, 2007 Joint Decision of the trial court convicting Rosemarie Magundayao of violation of Sections 5 and 11, Article II of R.A. No. 9165, including the penalties imposed against her, is hereby affirmed *in toto*.[39]

The Court of Appeals found no compelling reason to overturn the verdict of guilt imposed by the trial court upon the accused-appellant. The appellate court upheld the ruling of the RTC that the evidence of the prosecution clearly established the concurrence of all the elements of the crimes of illegal sale and possession of prohibited drugs. The testimonies of the prosecution

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[36] *Id.* at 215-216.

[37] *Id.* at 219.

[38] *Id.* at 220.

[39] CA *rollo*, p. 108.

witnesses proved the fact that a buy-bust operation was conducted by the police, which resulted in the apprehension of the accused-appellant after she was caught *in flagrante delicto* in the act of selling *shabu* and possessing another sachet thereof. The appellate court likewise rejected the accused-appellant's contention that she was a victim of a frame-up since there was no evidence of any ill or improper motive on the part of the police that would have impelled the latter to fabricate grave charges against the accused-appellant. Furthermore, the Court of Appeals disregarded the allegation of the accused-appellant that the non-compliance with the provisions of Section 21(1)[40] of Republic Act No. 9165 on the part of the police was fatal to the prosecution's case. Citing *People v. Pringas*,[41] the appellate court held that "[f]ailure to comply with Section 21 of R.A. No. 9165 will not render the arrest of the accused illegal, nor will it result to the inadmissibility in evidence against the accused of the illegal drugs seized in the course of the entrapment. What is of utmost relevance is the preservation of the integrity and evidentiary value of the confiscated illegal drugs, for in the end, the same would be the thrust that shall determine the guilt or innocence of the accused."

The accused-appellant assailed the above judgment of the Court of Appeals *via* the instant appeal before this Court.[42]

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[40] SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[41] G.R. No. 175928, August 31, 2007, 531 SCRA 828.

[42] *Rollo*, pp. 19-21.

In a Resolution[43] dated July 20, 2009, we required the parties to file their respective supplemental briefs, if they so desired, within 30 days from notice. The parties filed their respective manifestations, stating that they will no longer file any supplemental brief.[44]

Asserting her innocence, the accused-appellant avers that:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING [HER] WHOSE GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.[45]

The accused-appellant claims that there exist in the records of the case certain facts and circumstances that makes doubtful the prosecution's version of events. She pointed to the allegedly contradictory statements in the testimonies of PO3 Arago and PO2 Memoracion as to how their team leader, P/Chief Insp. Paat, received the information disclosed by the informant. Specifically, PO2 Memoracion testified that the informant himself talked to P/Chief Insp. Paat. PO3 Arago, however, stated in his testimony that the information was first given to the other members of their team and the same was thereafter relayed to P/Chief Insp. Paat.

The accused-appellant also argues that the inventory of the items seized from the accused-appellant lacked the requisite signatures of a representative of the media, the Department of Justice or any elected public official. This procedural lapse was allegedly not explained adequately by the witnesses of the prosecution. In like manner, the police did not photograph the confiscated items in the presence of the above-enumerated individuals. These procedural lapses, the accused-appellant posits, violated the provisions of Section 21(1) of Republic Act No. 9165, thus proving that the police failed to perform their duty properly. Accordingly, in praying for her acquittal, the accused-appellant submits that the presumption of regularity in

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[43] *Id.* at 24-25.

[44] *Id.* at 26-30, 33-36.

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

the performance of official functions cannot be invoked as a basis for her conviction given the presence of facts and circumstances tending to negate said presumption. She concludes that "the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt."[46]

The denial of the appeal is in order.

In *People v. Santos*,[47] the Court ruled as follows:

> Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[48]

After a thorough review of the records of this case, we hold that the factual findings and conclusions of the trial court, which were upheld by the appellate court, are fully supported by the evidence.

The pronouncement in *People v. Padasin*[49] quoted below is relevant to the case at bar:

> Appellant rightly argues that the presumption of regularity in the performance of official duty by law enforcement agents should not by itself prevail over the presumption of innocence. In fact it is on this premise that we have laid down the 'objective' test in scrutinizing buy-bust operations. In *People v. Doria*, we said:

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[46] *Id.* at 48.

[47] G.R. No. 176735, June 26, 2008, 555 SCRA 578.

[48] *Id.* at 592.

[49] 445 Phil. 448 (2003).

> We therefore stress that **the 'objective' test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale**. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the 'buy-bust' money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.[50] (Emphasis ours.)

In consonance with the above-stated "objective test," the testimony of PO2 Memoracion duly established that the members of the SAID-SOTF of the Taguig City Police Station properly performed their duties in the conduct of the buy-bust operation on April 14, 2005. The testimony of PO2 Memoracion, which was corroborated by the testimony of PO3 Arago, stated in great detail how his team carried out the buy-bust as follows:

> PROSEC. SANTOS: Was there any incident that transpired which has relation to your work as [a] drug enforcement officer during that particular day April 14, 2005?
> A: Yes, sir.
>
> PROSEC. SANTOS: Can you please tell us?
> A: A reliable informant in the afternoon of April 14 came to our office and informed [us] regarding a female individual who was selling illegal drug at Bagong Bayan corner Paso Street, Taguig City.
>
> PROSEC. SANTOS: To whom did that informant talked (sic) during that time?
> A: To our chief, sir, P/Chief Insp. Romeo Paat, sir.
>
> PROSEC. SANTOS: When Insp. Paat learned of the activity of this *alias* Rose, do you know what your chief did?

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[50] *Id.* at 456.

A: He has a plan, sir, to conduct possible buy-bust operation, sir during that time.

PROSEC. SANTOS: And who were involved in that plan to conduct buy-bust operation?
A: PO3 Antonio Reyes, PO3 Danilo Arago, P/Chief Insp. Romeo Paat, reliable informant and I, sir.

PROSEC. SANTOS: And what was your specific assignment in this buy-bust operation?
A: To act as the poseur-buyer.

PROSEC. SANTOS: How about the others, what were [their] assignment?
A: Back up, sir.

PROSEC. SANTOS: Now, you were assigned as the poseur-buyer in this particular case, was there anything that you had to buy whatever you want from this *alias* Rose during that time?
A: The marked money, sir consisting of two (2) pieces of one hundred peso bill.

PROSEC. SANTOS: You said marked money, how was this money marked?
A: I was the one who put the markings on the money, sir.

PROSEC. SANTOS: What kind of markings did you place on this money?
A: My initial, sir, RBM.

PROSEC. SANTOS: Where was your initial placed on the money?
A: At the upper right portion of the serial number, sir.

PROSEC. SANTOS: What else was planned during that time for the purpose of conducting a buy-bust operation?
A: We also prepare[d] the pre-operation report and the blotter as well as the photocopy of the genuine money and then the scissor, the masking tape and ballpen, sir.

x x x x x x x x x

PROSEC. SANTOS: This pre-operation report is addressed to PDEA, do you know what action did the PDEA take regarding your pre-operation report?
A: They received our pre-operation report and simultaneously gave the coordination sheet, sir.

x x x x x x x x x

PROSEC. SANTOS: What else was done or plan[ned] regarding this buy-bust operation specially you designated as the poseur-buyer?

A: We plan that the reliable informant assisted (sic) me to buy suspected *shabu* from the accused during that time, sir.

x x x x x x x x x

PROSEC. SANTOS: And who was assigned as your back up or your perimeter men during that time?

A: PO3 Antonio Reyes and PO3 Danilo Arago, sir.

PROSEC. SANTOS: Now, after all this preparations were done and completed, what if any did your team do then?

A: We proceeded to the area, sir.

PROSEC. SANTOS: And what area are you referring at this time?

A: Bagong Bayan corner Paso Street, Taguig City.

x x x x x x x x x

PROSEC. SANTOS: What happened when you were already there?

A: The informant and I walk[ed], the back up members were following us together with the team leader. When the informant saw the accused *alias* Rose, they talked and I was introduced as his [friend], that I wanted to buy *shabu.*

PROSEC. SANTOS: How were you introduced by your informant to this person *alias* Rose?

A: The informant uttered, "*Rose, kaibigan ko, galing probinsya, iiskor ng shabu sa'yo*".

x x x x x x x x x

PROSEC. SANTOS: And when you were introduced as one needing the *shabu* and just coming from the province, what was the reaction of this *alias* Rose?

A: None, sir, she just ask[ed] me how much will I buy.

x x x x x x x x x

PROSEC. SANTOS: And what was your reaction when you were asked that way by this *alias* Rose?

A: I uttered, "*dalawang-daan lang*".

PROSEC. SANTOS: When you said "*dalawang-daan lang*", what was the reaction of [this] *alias* Rose?
A: None, sir, after that, I handed to her the two hundred pesos.

PROSEC. SANTOS: And to whom did you hand that money?
A: To the accused, sir.

PROSEC. SANTOS: Did this *alias* Rose accept the money?
A: Yes, sir.

PROSEC. SANTOS: After that, what happened?
A: She pulled out from her pocket the one (1) transparent plastic sachet containing white crystalline substance, and then she gave it to me, sir.

x x x x x x x x x

PROSEC. SANTOS: Did you receive the plastic sachet containing whatsoever from her during that time?
A: Yes, sir.

PROSEC. SANTOS: After that, what happened? After you have already received or gotten hold [of] the merchandise or the item that you bought from her, what happened then?
A: I made the pre-arranged signal, sir.

PROSEC. SANTOS: And how did you do that?
A: I remove[d] my bullcap, sir.

PROSEC. SANTOS: After giving the pre-arranged signal, what did you do?
A: I saw PO3 Arago followed by PO3 Reyes coming, I informed *alias* Rose that I was a policeman and showed her my ID, sir.

PROSEC. SANTOS: Just like that? You just informed her that you are policeman plus your ID, and that's it? You did not do anything?
A: I told her not to run, I'm a police officer, I am arresting her for selling illegal drug.

x x x x x x x x x

PROSEC. SANTOS: So, what happened?
A: I requested her to bring out the contents of her pocket and the buy-bust money.

PROSEC. SANTOS: Did she comply with your request?
A: Yes, sir.

PROSEC. SANTOS: And what was brought out or what were the contents of her pocket if there was anything?
A: There was another plastic sachet with suspected *shabu* and the buy-bust money, and I confiscated those items.

PROSEC. SANTOS: When you confiscated the buy-bust money and another plastic sachet that were come from her pocket, what if any did you do with these? To the money and the *shabu* that was came from her pocket?
A: I put markings on the two (2) plastic sachets, a suspected *shabu*.

PROSEC. SANTOS: Nothing more that was done in the very place where you bought the *shabu,* confiscated another one and arrested the accused, was there anything more that was done?
A: I apprise[d] her of her constitutional rights, sir.

x x x x x x x x x

PROSEC. SANTOS: How about the *shabu* that you bought from the accused and confiscated from the accused, did you not make any listing about that?
A: I marked the *shabu* that I bought at the area, sir.

x x x x x x x x x

COURT: What about the *shabu* that you saw?
A: I also marked it, Your Honor.

COURT: After you have marked these items, what document did you prepare?
A: The request, Your Honor.

x x x x x x x x x

COURT: After marking, after apprising her, what else?
A: I placed the recovered items in a plastic containing suspected *shabu* and I was holding the buy-bust money and we boarded Rose in our car.[51]

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[51] TSN, November 22, 2006, pp. 4-16.

Clearly gleaned from the above testimony are the details relating to the initial contact between PO2 Memoracion and the accused-appellant; the said police officer's offer to purchase; the statement of the amount he was willing to pay; and the consummation of the sale by the accused-appellant's delivery of the *shabu* to PO2 Memoracion. On this matter, our ruling in *People v. Agulay*[52] dictates that "[a]bsent any proof of motive to falsely accuse [the accused-appellant] of such a grave offense, the presumption of regularity in the performance of official duty and the findings of the trial court with respect to the credibility of witnesses shall prevail over that of the accused-appellant."

In seeking exculpation from the above charges, the accused-appellant invoked the defense that she was framed by the police. The Court, however, is not convinced. We reiterated in *People v. Hernandez*[53] that "[i]n order to prosper, the defense of denial and frame-up must be proved with strong and convincing evidence."

In the instant case, the accused-appellant impugned the prosecution's assertion that she was arrested after a buy-bust operation was undertaken by the SAID-SOTF operatives. Instead, she claimed that the police merely barged into her house, forcibly took her to the Tuktukan jail and tried to extort money from her. Her refusal to give in to the police officers' demand allegedly brought about the filing of the drugs charges against her. The Court notes, however, that the accused-appellant's contention was without any corroborative evidence whatsoever. Neither did she offer any proof to substantiate her allegation of extortion against the apprehending officers. The accused-appellant even admitted that, prior to her arrest, she did not know any of the police officers who arrested her. Moreover, she stated that she did not know of any reason why the police officers would file a case against her if the same were not true.[54] Consequently,

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[52] G.R. No. 181747, September 26, 2008, 566 SCRA 571, 599.

[53] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 642.

[54] TSN, March 12, 2007, p. 18.

the accused-appellant's claim of frame-up cannot prevail over the affirmative testimony and the positive identification made by the witnesses for the prosecution. Hence, the presumption of regularity in the performance of official duties on the part of the police officers in this case stands.

Anent the offenses charged against the accused-appellant, the RTC and the Court of Appeals adjudged her guilty of the crimes of illegal sale and possession of dangerous drugs.

It was held in *People v. Hernandez*[55] that "[t]o secure a conviction for **illegal sale** of *shabu*, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof." *People v. Naquita*[56] further adds that "[w]hat is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*."

The above elements have been sufficiently established by the prosecution. PO2 Memoracion was the poseur-buyer and he identified the accused-appellant as the seller. The object of the sale was the sachet containing eight centigrams (0.08 grams) of *shabu*, which bore the marking "RAM-1", and the consideration paid by the poseur-buyer therefor consisted of the ₱200 marked money. PO2 Memoracion also categorically stated that the object of the sale was in fact handed to him by the accused-appellant after he gave her the marked money.

As to the charge of **illegal possession** of dangerous drugs, *People v. Lazaro, Jr.*[57] provides that the elements thereof are: "(1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously

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[55] *Supra* note 53 at 635.

[56] G.R. No. 180511, July 28, 2008, 560 SCRA 430, 449.

[57] G.R. No. 186418, October 16, 2009, 604 SCRA 250, 267.

possessed the said drug." That the accused-appellant knowingly carried the illegal drug *shabu* without authority was likewise proven in this case. PO3 Arago and PO2 Memoracion both testified to the fact that after the latter effected the arrest of the accused-appellant, she was ordered to empty her pocket. When she did so, she produced another plastic sachet, which PO2 Memoracion marked as "RAM-2". The chemistry report of the forensic chemist P/Insp. De Guzman confirmed that the said sachet contained ten decigrams (0.10 grams) of *shabu*.

As regards the alleged inconsistencies in the testimonies of PO2 Memoracion and PO3 Arago, the Court finds the same unpersuasive. *People v. Lazaro*[58] states that "[f]or a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused."

We quote with approval the following discussion of the Court of Appeals on the matter:

> Whether the information regarding the identity and illegal drugs activities of Rosemarie was relayed directly to P/Chief Inspector Romeo Paat, or the tip was otherwise given initially to some inferior police personnel at the station who thereafter informed their station chief is a trivial and inconsequential matter. What is of utmost importance was the undisputed fact that a trusted civilian informant volunteered a tip to the police authorities, and finding the information reliable, the tip became the basis for the police to plan an entrapment operation which, true enough, paved the way to the eventual apprehension of Rosemarie who was caught *in flagrante delicto* in the act of selling a sachet of *shabu*, and subsequently, after further search, for possession of another sachet of the same prohibited drug.[59]

The Court likewise finds untenable the contention of the accused-appellant that since the provisions of Section 21(1),

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[58] *Id.* at 272.

[59] CA *rollo*, p. 102.

Article II of Republic Act No. 9165 were not strictly complied with, the police officers failed to properly perform their duties.

Section 21(1), Article II of Republic Act No. 9165 reads:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

On the other hand, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, stipulates:

> (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: x x x 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**. (Emphasis ours.)

In *People v. Padua*,[60] the Court stated that "[c]learly, the purpose of the procedure outlined in the implementing rules is centered on the preservation of the integrity and evidentiary value of the seized items." Furthermore, we reiterated in *People v. Naquita*[61] that "[n]either would non-compliance with Section 21 render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

In the case before us, the chain of custody of the drugs subject matter of the case, along with the marked money used in the buy-bust, was shown to have been preserved. The relevant portions of the testimony of PO2 Memoracion are as follows:

COURT: At the scene of the crime? *May dokumento ba kayong ginagawa*?
A: Yes, Your Honor.

COURT: *Anong papel yun*?
A: *Yung* inventory *po*, Your Honor.

PROSEC. SANTOS: You were talking of an inventory, who inventoried the items that you bought and seized from *alias* Rose?
A: I, sir.

x x x x x x x x x

PROSEC. SANTOS: At the bottom portion of this document, is the name of the suspect, representative and a purported signature above the name Rosemarie Magundayao *y* Alejandro, do you know whose signature is that?
A: It's the signature of Rosemarie, the accused.

x x x x x x x x x

PROSEC. SANTOS: After that, what else happened?
A: We went back to our office, sir.

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[60] G.R. No. 174097, July 21, 2010, 625 SCRA 220, 233.

[61] *Supra* note 56 at 448.

PROSEC. SANTOS: And when you went there, where was the accused?
A: She was with us, sir.

PROSEC. SANTOS: How about the specimen that you or the item that you bought and confiscated from the accused, where are they?
A: It's with me, sir.

PROSEC. SANTOS: How about the money, where is it?
A: It's with me, sir.

PROSEC. SANTOS: And what happened in your office?
A: She was turn[ed] over to the investigator on case, sir.

x x x x x x x x x

PROSEC. SANTOS: What items did you turn over to your investigator?
A: The two (2) plastic sachets containing suspected *shabu* and the buy-bust money.

PROSEC. SANTOS: And who was your investigator during that time?
A: SPO2 Armando Cay, sir.

PROSEC. SANTOS: Do you know what your investigator Cay did when you turn[ed] over the items to him during that time?
A: We prepare[d] the request for laboratory examination.

PROSEC. SANTOS: How about the articles or the items that you turn over to Cay during that time, where were they when Cay was preparing the request?
A: [In front] of us, sir.

x x x x x x x x x

PROSEC. SANTOS: And who delivered or transported the request and the specimen to the crime laboratory?
A: I, sir.

x x x x x x x x x

PROSEC. SANTOS: Do you know what happened to the specimen when you delivered that to the crime laboratory?
A: Yes, sir.

PROSEC. SANTOS: What happened?
A: It gave positive result to the test of methylamphetamine hydrochloride.

x x x x x x x x x

PROSEC. SANTOS: Can you again tell us what marking did you put on the plastic sachet containing the *shabu* that you bought from the accused?
A: The initial of the accused RAM, sir.

PROSEC. SANTOS: What else?
A: RAM-1 and RAM-2, sir.

PROSEC. SANTOS: RAM-1 is the *shabu*?
A: Subject of sale, sir.

x x x x x x x x x

PROSEC. SANTOS: Now, how about the money Officer that you said you used in buying and which later on you found from the possession of the accused and confiscated, where are they now?
A: It was turn[ed] over, sir, during the inquest it was submitted.[62]

The above statements of PO2 Memoracion were corroborated by the testimony of PO3 Arago, who testified that he saw the former take custody of the two plastic sachets seized during the buy-bust operation and the said items were turned over to the crime laboratory.[63] Moreover, the Request for Laboratory Examination (Exhibit B)[64] issued by the office of SAID-SOTF of the Taguig City Police Station on April 14, 2005 reflected that the fact that the same was delivered to the crime laboratory by PO2 Memoracion on even date at 10:00 p.m.

In fine, the evidence for the prosecution established that during a buy-bust operation, the accused-appellant was caught *in flagrante delicto* in the act of selling a plastic sachet of *shabu* to a police officer, who acted as a *poseur*-buyer, and was thereafter caught

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[62] TSN, November 22, 2006, pp. 17-25.

[63] Records, p. 62.

[64] *Id.* at 133.

in possession of another sachet of *shabu*. Thus, the guilt of the accused-appellant of the crimes charged had been proven in the instant case beyond reasonable doubt.

Under Section 5, Article II of Republic Act No. 9165, the crime of unauthorized sale of *shabu*, regardless of the quantity and purity thereof, is punishable with life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00).

Hence, the penalty of life imprisonment and a fine of ₱500,000.00 was correctly imposed by the RTC and the Court of Appeals on the accused-appellant Rosemarie Magundayao *y* Alejandro for illegal sale of *shabu*.

On the other hand, in accordance with Section 11, Article II of Republic Act No. 9165, the crime of illegal possession of less than five (5) grams of *shabu* is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00). Thus, the RTC and the Court of Appeals properly penalized the accused-appellant Rosemarie Magundayao *y* Alejandro with imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and twenty-one (21) days, as maximum, as well as a fine of ₱300,000.00, since the said penalties are within the range of penalties prescribed by the above provision.

WHEREFORE, the appeal is **DENIED**. The Decision of the Court of Appeals dated December 19, 2008 in CA-G.R. CR. No. 02899, which affirmed the Joint Decision dated June 27, 2007 of the Regional Trial Court of Pasig City, Branch 267, in Criminal Case Nos. 14061-D and 14062-D, is hereby **AFFIRMED**. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[*] Per Special Order No. 1207 dated February 23, 2012.

SECOND DIVISION

[G.R. No. 189191. February 29, 2012]

MID-ISLANDS POWER GENERATION CORPORATION, *petitioner, vs.* **COURT OF APPEALS, POWER ONE CORPORATION, ISLANDS GRID NETWORK PHILIPPINES, INC., DAVID TAN, and MANUEL LAURON,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A.M. NO. 07-7-12-SC; CLAUSE ALLOWING AN EXTENSION OF THE PERIOD TO FILE PETITION FOR *CERTIORARI* UNDER RULE 65, DELETED; RATIONALE.— In *Laguna Metts Corporation v. Court of Appeals*, we explained that the reason behind the amendments under A.M. No. 07-7-12-SC was to prevent the use or abuse of the remedy of petition for *certiorari* in order to delay a case or even defeat the ends of justice. We thus deleted the clause that allowed an extension of the period to file a Rule 65 petition for compelling reasons. Instead, we deemed the 60-day period to file as reasonable and sufficient time for a party to mull over the case and to prepare a petition that asserts grave abuse of discretion by a lower court. The period was specifically set and limited in order to avoid any unreasonable delay in the dispensation of justice, a delay that could violate the constitutional right of the parties to a speedy disposition of their case. Consequently, we pronounced that when the CA granted the motion for extension, it in effect disregarded and modified, if not outrightly reversed, the Supreme Court *En*

[*] Petitioner alleges that respondents Islands Grid Network Philippines, Inc., David Tan, and Manuel Lauron were not named petitioners in the Petition for *Certiorari* filed by Power One with the CA; that the appellate court, with grave abuse of discretion, included them as petitioners in CA-G.R. SP No. 106511; and that petitioner included them as named respondents *ex abundanti ad cautelam.* Records show that, indeed, Power One was the sole petitioner that filed the Petition for *Certiorari* filed in CA-G.R. SP No. 106511.

Banc Resolution in A.M. No. 07-7-12-SC. We then said that in so doing, the appellate court arrogated unto itself "a power it did not possess, a power that only this Court may exercise." Consequently, we ruled that petitions for *certiorari* must now be filed strictly within 60 days from notice of judgment or from the order denying a motion for reconsideration.

2. ID.; ID.; ID.; ID.; MAY BE RELAXED TO SERVE SUBSTANTIAL JUSTICE AND SAFEGUARD STRONG PUBLIC INTEREST.— We held in *Domdom* that if absolute proscription were intended, the deleted portion could have just simply been reworded to specifically prohibit an extension of time to file such petition. Thus, because of the lack of an express prohibition, we held that motions for extension may be allowed, subject to this Court's sound discretion, and only under exceptional and meritorious cases. Indeed, we have relaxed the procedural technicalities introduced under A.M. No. 07-7-12-SC in order to serve substantial justice and safeguard strong public interest. Thus, in *Tan v. Ballena*, we pronounced: It is a well-settled principle that rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. In deciding a case, the appellate court has the discretion whether or not to dismiss the same, which discretion must be exercised soundly and in accordance with the tenets of justice and fair play, taking into account the circumstances of the case. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.

3. ID.; ID.; ID.; ID.; ID.; WORKLOAD AND RESIGNATION OF THE LAWYER HANDLING THE CASE ARE NOT SUFFICIENT REASONS FOR JUSTIFICATION OF THE RELAXATION.— The amendments under A.M. No. 07-7-12-SC were meant to be implemented strictly, with a view in mind that the 60-day period to file is a reasonable and sufficient time to prepare a Rule 65 petition. Workload and resignation of

the lawyer handling the case are insufficient reasons to justify the relaxation of the procedural rules. He should not have left his client with this very critical piece of work hanging in midair. Were it not for the exceptional nature of the case and the strong public interest involved herein, we would have overturned the approval by the CA of the Motion to extend the period to file a Rule 65 Petition.

APPEARANCES OF COUNSEL

Jimenez Gonzales Liwanag Bello Valdez Caluya and Fernandez for petitioner.

Westwood Law for Power One Corp.

Fernandez Law Firm for Island Grid Network, Phils., Inc., *et al.*

D E C I S I O N

SERENO, *J.*:

Before the Court is a Petition for *Certiorari* and Prohibition filed under Rule 65 of the Rules of Court, assailing the 23 December 2008 and 23 June 2009 Resolutions of the Court of Appeals (CA).[1] The core issue at bench is whether the CA had the authority to grant a Motion for Extension to file a petition for *certiorari*, in the light of our Resolution in A.M. No. 07-7-12-SC, which took effect on 27 December 2007.

Facts

The case stems from the Complaint for injunction with urgent prayer for temporary restraining order and preliminary injunction (Civil Case No. 70957-SJ) filed by MindoroTech Services Inc. (MindoroTech) and petitioner Mid-Islands Power Generation Corporation (Mid-Islands Power) against respondents Power One Corporation (Power One), Islands Grid Network Philippines, Inc. (Islands Grid), David Tan (Tan), and Manuel Lauron (Lauron).

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[1] The 23 June 2009 Resolution in CA-G.R. SP No. 106511 was penned by CA Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jose L. Sabio, Jr. and Ricardo R. Rosario.

Oriental Mindoro Electric Cooperative, Inc. (ORMECO), an electric distribution cooperative, entered into an Electric Supply Agreement (ESA) with Power One as the former's new electric power provider. Pursuant to the agreement, Power One was permitted to install, construct or acquire, and operate an electric generating facility in Oriental Mindoro. It was also authorized to assign its rights, interests, and obligations under the ESA to an affiliate or to a special purpose corporation that it may organize for the project (project company). Furthermore, Power One was empowered to form other corporations for the purpose of undertaking various aspects of the ESA. As part of the agreement, it was given the right to use the existing Calapan Diesel Power Plant in Oriental Mindoro.

Power One invited several potential partners to join it in a business venture involving the management and operations of its ESA with ORMECO and its existing ESA with Central Negros Electric Cooperative (CENECO). Under the proposal, they would form a joint venture to be called "Mid-Islands Power Generation Corporation." This proposed project company would assume all the interests, rights, and obligations of Power One under its ESA with CENECO (ESA-CENECO) and with ORMECO (ESA-ORMECO). Consequently, on 4 June 2004, Power One entered into a Memorandum of Agreement[2] (MOA) with Victor Pascual, Faustino Lim, Philip Uy, and Viscal Development Corporation. The MOA stated that the new company, Mid-Islands Power, would own and implement Phase 1 of ESA-CENECO, which involved existing and proposed power plants in Alijis District, Bacolod City; and Phase 1 of ESA-ORMECO, which concerned the existing Calapan Diesel Power Plant in Calapan City.

Under the agreement, the new partners would subscribe to 69.5%; Power One, through its affiliate company Islands Grid, to 29.5%; and a certain Kenneth Uy, to the remaining 1% of the outstanding capital stock of Mid-Islands Power. It was further stipulated that the management and operations of the newly organized project company, Mid-Islands Power, would be the

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[2] Memorandum of Agreement, *rollo*, p. 158.

responsibility of the new co-partners of Power One. Thus, on 15 October 2004, by virtue of an Assignment Memorandum,[3] Power One assigned its two ESAs to Mid-Islands Power and notified ORMECO accordingly. In turn, ORMECO acknowledged the assumption by Mid-Islands Power of the rights, interests, and obligations of Power One under the ESA-ORMECO.

In July 2005 Victor Pascual, Faustino Lim, Philip Uy, and Container Corporation of the Philippines[4] (collectively, Pascual *et al.*) entered into a Revised Memorandum of Agreement[5] (Revised MOA) with Power One, in which the parties agreed to shelve the CENECO project. Instead, they decided to focus on Phase 1 of the ORMECO project and to add Phase 2 of the ESA-ORMECO to their joint venture. Furthermore, the parties stipulated that they would form "an O & M Company," which would operate and manage the Calapan Diesel Power Plant on behalf of Mid-Islands Power. It was agreed that Pascual, *et al.* would own and subscribe to 80% and Power One, through Islands Grid, to 20% of the stocks of the "O & M Company" that would be formed.

The business relations between Power One and Pascual, *et al.* eventually turned thorny. On various dates in May 2006, respondent Tan – on behalf of Power One – sent correspondences[6] to Mid-Islands Power. An issue raised therein was the latter's inability to fulfill its commitment to complete certain aspects of the ORMECO project within their set deadlines. Power One reiterated that the timely completion of Phase 1 of the ESA would be critical to the achievement of their profit goals. It insisted that Mid-Islands Power should decide and act faster so that the delays in finishing the projects would be cut by half.

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[3] *Rollo*, p. 174.

[4] The original party to the MOA was Viscal Development Corporation and not Container Corporation of the Philippines (CCP). There is nothing in the records that would explain the reason for the CCP's substitution of Viscal Development Corporation.

[5] *Rollo*, p. 176.

[6] *Id.* at 188-239.

For its part, Mid-Islands Power broached several issues concerning its monetary advances, future financing arrangements, and proposed revision of the provisions on shareholdings in their Revised MOA. A further exchange of correspondences ensued,[7] with both parties raising various concerns, such as lack of the required financing for the ORMECO project; the inability of Pascual, *et al.*, through Mid-Islands Power, to complete Phases 1 and 2 of the ORMECO project; and inefficiency in the management of the Mid-Islands Power joint venture.

Consequently, in a demand letter[8] sent to Pascual, *et al.* through Mid-Islands, Power One asked for the specific performance of Pascual, *et al.*'s obligations under the Revised MOA. Power One asserted that the continued delay in finishing the ORMECO project had already resulted in a reduction of the electricity generated to less than 50% of capacity. Power One then informed Mid-Islands that their right to supply power to ORMECO and NPC, as well as to occupy and operate the leased facilities of NAPOCOR, had not taken effect.

Power One alleged that it had already informed ORMECO that the assignment of the ESA in favor of Mid-Islands Power had not taken effect as of 30 April 2006 because of the latter's inability to fulfill its obligations under the Revised MOA. Furthermore, Power One informed Mid-Islands Power that ORMECO had supposedly noticed that another company, MindoroTech, had been operating the Calapan Diesel Power Plant in violation of the ESA. Power One thus sought an explanation of the role of MindoroTech and demanded that Mid-Islands provide a clear plan on how the latter would complete Phase 1 of the ORMECO project. Subsequently, on 19 August 2006, Power One and Islands Grid barred Mid-Islands Power and MindoroTech from entering the Calapan Diesel Power Plant.

On 11 September 2006, MindoroTech and petitioner Mid-Islands Power filed a Complaint (Civil Case No. 70957-SJ)

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[7] *Id.*

[8] *Id.* at 240.

against respondents Power One, Islands Grid, Tan, and Lauron. The complainants argued that, since the interests, rights, and obligations of respondents had already been transferred, respondents must be restrained from preventing them from performing their lawful and valid obligations under the ESA and the Revised MOA. Respondents opposed the Complaint and argued that the assignment of the ESA-ORMECO did not become effective, since certain conditions under the Revised MOA had not yet been fulfilled. According to respondents, the Calapan Diesel Power Plant could not be commercially operated unless the conditions were satisfied; and until due consultation with ORMECO was held, and the latter's approval obtained.

The Pasig City Regional Trial Court (Pasig RTC) issued a 72-hour temporary restraining order (TRO) to Power One, Islands Grid, Tan, and Lauron. At the continuation of the hearing on the issuance of a preliminary injunction, the parties agreed to the policy of "no touch," in which none of the parties would enter the control and the engine rooms of the power plant. They also agreed to an interim compromise operation of the power plant. In the meantime, the branch sheriff of the Pasig RTC placed the operation of the power plant under the responsibility of Mid-Islands Power and MindoroTech.

However, on 20 October 2006 and during the pendency of the Complaint filed by MindoroTech and Mid-Islands Power, ORMECO filed a separate Complaint (Civil Case No. CV-06-5689) against Power One for specific performance of contract, with an application for preliminary mandatory injunction and damages before the RTC in Calapan City (Calapan RTC).[9] On the same day, the trial court issued a 72-hour TRO commanding Power One to perform and comply with the latter's obligation to immediately operate the Calapan Diesel Power Plant pursuant to the ESA-ORMECO. The Order also directed that, if Power One failed to perform its obligation, ORMECO would be authorized to operate the power plant. The sheriff of Calapan RTC eventually

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[9] Investigation Report (*Sapit v. Viray*, A.M. No. P-07-2316, 7 December 2007) at 12, *rollo*, p. 692.

turned over to ORMECO the operations of the power plant and removed Mid-Islands and MindoroTech therefrom. According to the Calapan RTC judge, the TRO was issued to safeguard public interest, because there was an impending brownout in the whole province of Oriental Mindoro.[10]

On 6 November 2006, the Pasig RTC issued an Order[11] granting the prayer of MindoroTech and Mid-Islands Power for the issuance of a writ of preliminary injunction against Power One, Islands Grid, Tan, Lauron, and their representatives and agents. According to the RTC, actual and imminent danger was present. If the employees of complainants were prevented from operating the Calapan Diesel Power Plant, there would be undue interference with the performance of the ESA, which would in turn result in a power crisis in the area serviced by the Calapan Diesel Power Plant. The Pasig RTC noted that public interest was involved in the full and continuous supply of electricity in Oriental Mindoro. Thus, pursuant to the writ, Mid-Islands Power and MindoroTech were allowed to reenter and operate the Calapan Diesel Power Plant.

Thus, on the afternoon of 10 November 2006, the branch sheriff implemented the writ of preliminary injunction issued by the Pasig RTC, which allowed Mid-Islands Power and MindoroTech to resume their operations at the power plant. On that same day, however, the Calapan RTC issued a separate writ of preliminary mandatory injunction against these two corporations. Counsel for Power One then went to the power plant and demanded that Mid-Islands Power and MindoroTech vacate the premises. As both parties tried to enforce the two separate writs of preliminary injunction, which were issued by two different trial courts, trouble at the power plant ensued. Eventually, the Calapan RTC sheriff forcibly broke open the doors of the power plant and demanded that the personnel of both corporations leave the premises.

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[10] *Id.* at 8, *rollo,* p. 688.

[11] *Rollo,* p. 331.

Consequently, respondents assailed the Order of the Pasig RTC before the CA (CA-G.R. SP No. 97243) through a Petition for *Certiorari* and Prohibition.[12] They argued that the trial court did not have territorial jurisdiction to issue the injunctive writ, because the acts sought to be enjoined had been committed in Calapan, Oriental Mindoro. On 10 December 2007, the CA issued a Decision[13] sustaining the Order of the Pasig RTC. According to the appellate court, the lockout indeed happened in Calapan, Oriental Mindoro; but since those who had barred the employees of Mid-Islands Power merely acted pursuant to the orders that officials of Power One issued from its principal office in Pasig City, the acts sought to be restrained had actually been committed within the territorial jurisdiction of the Pasig RTC. On 4 March 2008, the appellate court issued a Resolution denying the Motion for Reconsideration of Power One and Islands Grid. Afterwards, on 20 April 2009, the CA issued another Resolution ordering the entry of judgment of its 10 December 2007 Decision and – as the judgment was no longer appealed to this Court – subsequently ruled that the said CA Decision had become final and executory on 2 April 2008.

Meanwhile, the Pasig RTC proceeded with the main action for injunction in Civil Case No. 70957-SJ. On 29 September 2008, it rendered summary judgment in favor of Mid-Islands Power and MindoroTech and made the preliminary injunction it issued on 6 November 2006 permanent.[14] Pursuant to the Order, Islands Grid and Power One were permanently enjoined from committing acts that would tend to prevent Mid-Islands Power and MindoroTech from exercising and performing the latter two's rights and obligations in operating the Calapan Diesel Power Plant.

On 9 December 2008, Power One filed a Motion for Extension of time to file its Petition for *Certiorari* with the CA and prayed for a 15-day extension. According to Power One, the Petition

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[12] *Id.* at 515.

[13] *Id.* at 568.

[14] Order of Pasig RTC at 14, *rollo*, p. 97.

would question the 29 September 2008 Order of the Pasig RTC granting a permanent injunction against the former.[15] Power One claimed that on 10 October 2008, it received the Order that gave it until 9 December 2008 to file a petition for *certiorari.* However, it posited that the lawyer handling the case had left the firm, and that the other lawyers were not able to act upon the Petition due to "other equally important professional undertaking."[16] Pending the CA resolution on the Motion for Extension, Power One proceeded to file a Petition for *Certiorari* on 23 December 2008. The Motion for Extension (docketed as CA-G.R. SP No. 106511) was eventually granted on 23 December 2008.[17] Mid-Islands Power opposed the Resolution of the CA and argued that the Motion had been granted in violation of A.M. No. 07-7-12-SC. On 23 June 2009, the CA denied the Motion of Mid-Islands Power,[18] which consequently filed the instant Petition.

Issue

The sole issue presented before this Court is whether or not the CA committed grave abuse of discretion, amounting to lack or excess of jurisdiction, in granting respondent Power One's Motion for Extension.

Discussion

According to petitioner, the CA committed grave abuse of discretion in granting Power One's Motion for Extension to file a petition for *certiorari*. Petitioner argues that the amendment under A.M. No. 07-7-12-SC had already deleted the provision that allows an extension of time to file a petition under Rule 65 of the Rules of Court.

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[15] Motion for Extension of Time to File Petition for *Certiorari* under Rule 65, first page (unpaginated), *rollo*, p. 35.

[16] *Id.* at second page (unpaginated), *rollo*, p. 36.

[17] *Rollo*, p. 31.

[18] *Id.* at 33.

Section 4, Rule 65 of the Rules of Court, was previously worded thus:

SEC. 4. *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphasis supplied.)

In a Resolution dated 4 December 2007, the Supreme Court *En Banc* issued A.M. No. 07-7-12-SC, which amended the aforecited provision as follows:

SEC. 4. *When and where to file the petition.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial

agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction.

In *Laguna Metts Corporation v. Court of Appeals*,[19] we explained that the reason behind the amendments under A.M. No. 07-7-12-SC was to prevent the use or abuse of the remedy of petition for *certiorari* in order to delay a case or even defeat the ends of justice. We thus deleted the clause that allowed an extension of the period to file a Rule 65 petition for compelling reasons. Instead, we deemed the 60-day period to file as reasonable and sufficient time for a party to mull over the case and to prepare a petition that asserts grave abuse of discretion by a lower court. The period was specifically set and limited in order to avoid any unreasonable delay in the dispensation of justice, a delay that could violate the constitutional right of the parties to a speedy disposition of their case. Consequently, we pronounced that when the CA granted the motion for extension, it in effect disregarded and modified, if not outrightly reversed, the Supreme Court *En Banc* Resolution in A.M. No. 07-7-12-SC. We then said that in so doing, the appellate court arrogated unto itself "a power it did not possess, a power that only this Court may exercise."[20] Consequently, we ruled that petitions for *certiorari* must now be filed strictly within 60 days from notice of judgment or from the order denying a motion for reconsideration.[21]

Nevertheless, in the more recent case of *Domdom v. Sandiganbayan*,[22] we ruled that the deletion of the clause in Section 4, Rule 65 by A.M. No. 07-7-12-SC did not, *ipso facto*, make the filing of a motion for extension to file a Rule 65

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[19] G.R. No. 185220, 27 July 2009, 594 SCRA 139.

[20] *Id.* at 146.

[21] *Id.*

[22] G.R. Nos. 182382-83, 24 February 2010, 613 SCRA 528.

petition absolutely prohibited. We held in *Domdom* that if absolute proscription were intended, the deleted portion could have just simply been reworded to specifically prohibit an extension of time to file such petition. Thus, because of the lack of an express prohibition, we held that motions for extension may be allowed, subject to this Court's sound discretion, and only under exceptional and meritorious cases.

Indeed, we have relaxed the procedural technicalities introduced under A.M. No. 07-7-12-SC in order to serve substantial justice and safeguard strong public interest. Thus, in *Tan v. Ballena*, we pronounced:

> It is a well-settled principle that rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. In deciding a case, the appellate court has the discretion whether or not to dismiss the same, which discretion must be exercised soundly and in accordance with the tenets of justice and fair play, taking into account the circumstances of the case. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[23] (Citations omitted.)

The present Petition involves one of those exceptional cases in which relaxing the procedural rules would serve substantial justice and safeguard strong public interest. It concerns the operations and management of the Calapan Diesel Power Plant – a power-generating facility that supplies electricity to Oriental Mindoro. It was alleged that the dispute between the parties had already resulted in a reduced generation of power, which was supposedly producing electricity at less than 50% of its capacity. A TRO had already been issued previously, as there was an impending brownout in the entire province of Oriental

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[23] G.R. No. 168111, 4 July 2008, 557 SCRA 229, 248.

Mindoro. Consequently, in order to protect strong public interest, this Court deems it appropriate and justifiable to relax the amendment of Section 4, Rule 65 under A.M. No. 07-7-12-SC, concerning the reglementary period for the filing of a Rule 65 petition. Considering that the imminent power crisis is an exceptional and meritorious circumstance, the parties herein should be allowed to litigate the issues on the merits. Furthermore, we find no significant prejudice to the substantive rights of the litigants as respondent was able to file the Petition before the CA within the 15-day extension it asked for. We therefore find no grave abuse of discretion attributable to the CA when it granted respondent Power One's Motion for Extension to file its Petition for *Certiorari*.

As a final note, we convey our strong disapproval over the failure of Power One's lawyers to file the Petition within the reglementary period. The amendments under A.M. No. 07-7-12-SC were meant to be implemented strictly, with a view in mind that the 60-day period to file is a reasonable and sufficient time to prepare a Rule 65 petition. Workload and resignation of the lawyer handling the case are insufficient reasons to justify the relaxation of the procedural rules. He should not have left his client with this very critical piece of work hanging in midair. Were it not for the exceptional nature of the case and the strong public interest involved herein, we would have overturned the approval by the CA of the Motion to extend the period to file a Rule 65 Petition.

WHEREFORE, the Petition is **DISMISSED**. The 23 December 2008 and 23 June 2009 Resolutions of the Court of Appeals in CA-G.R. SP No. 106511 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 189327. February 29, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EMILY MENDOZA *Y* SARTIN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS LAW); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— This Court has repeatedly held that the prosecution of the sale of dangerous drugs case is dependent on the satisfaction of the following elements: (1) [T]he identity of the buyer and the seller, the object, and the consideration; and (2) [T]he delivery of the thing sold and the payment therefor. Simply put, "[w]hat is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*."

2. ID.; ID.; ID.; FAILURE TO SUBMIT IN EVIDENCE THE PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED DRUGS WILL NEITHER RENDER THE ARREST OF THE ACCUSED ILLEGAL NOR THE ITEMS SEIZED ILLEGAL; CASE AT BAR.— This Court has, in many cases, held that while the chain of custody should ideally be perfect, in reality it is not, "as it is almost always impossible to obtain an unbroken chain." The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused. Hence, the prosecution's failure to submit in evidence the physical inventory and photograph of the seized drugs as required under Article 21 of Republic Act No. 9165, will not render Mendoza's arrest illegal or the items seized from her inadmissible. In the case at bar, it was shown that the integrity and evidentiary value of the seized drugs had been preserved. x x x It is therefore clear, that the prosecution was able to account for each link in the chain of custody over the *shabu*, from the moment it was seized from Mendoza, up to the time it was presented during the trial as proof of the *corpus delicti*.

3. ID.; ID.; ID.; BUY-BUST OPERATION; COORDINATION WITH PDEA (PHILIPPINE DRUG ENFORCEMENT AGENCY) IS NOT AN INDISPENSABLE REQUIREMENT THEREOF.— Lack of coordination with the PDEA will not invalidate a buy-bust operation. This Court has declared that coordination with the PDEA is not an indispensable requirement in buy-bust operations. Neither Section 86 of Republic Act No. 9165 nor its Implementing Rules and Regulations make PDEA's participation a condition *sine qua non* for the conduct of a buy-bust operation, especially since a buy-bust operation is merely a form of an *in flagrante* arrest, which is sanctioned by Section 5, Rule 113 of the Rules of Court.

4. ID.; ID.; ID.; DENIAL AND FRAME-UP IN DRUG CASES HAS INVARIABLY BEEN VIEWED BY THE SUPREME COURT WITH DISFAVOR FOR BEING EASILY CONCOCTED; PRESENT IN CASE AT BAR.— This Court has invariably viewed the common and standard defenses of denial and frame-up in drugs cases with disfavor for being easily concocted. For a police officer to frame her up, he must have known her prior to the incident. However, the informant had to introduce Ching to Mendoza before the sale of the *shabu* took place. Mendoza testified that she did not know Ching or the other police officers prior to her arrest. Moreover, Mendoza herself admitted that not only should she be considered as part of the urban poor, but that she also had no means of income. Her very circumstance belies her claim that the police officers charged her with this crime because she refused to pay the ₱50,000.00 they were allegedly extorting from her. For such defenses to succeed, they must be proven with strong and convincing evidence. Mendoza has not given this Court anything except her bare assertions.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-apellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal[1] is the July 21, 2009 **Decision**[2] of the Court of Appeals in **CA-G.R. CR.-H.C. No. 02725**, which affirmed the Regional Trial Court's (RTC) March 20, 2007 Decision[3] in **Criminal Case No. 03-214163**, wherein accused-appellant Emily Mendoza *y* Sartin (Mendoza) was found guilty beyond reasonable doubt of violating **Section 5, Article II of Republic Act No. 9165**, or the "Comprehensive Dangerous Drugs Act of 2002."

On May 23, 2003, Mendoza was charged before the RTC, Branch 23 of the City of Manila, of violating Section 5, Article II of Republic Act No. 9165. The accusatory portion of the Information provides:

> The undersigned accuses EMILY MENDOZA *Y* SARTIN of a Violation of Section 5, of Republic Act 9165, committed as follows:
>
> That on or about May 12, 2003, in the City of Manila, Philippines, the said accused, not being lawfully authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell ZERO POINT ONE FIVE NINE (0.159) gram of white crystalline substance commonly known as *SHABU*, containing methylamphetamine hydrochloride, a dangerous drug.[4]

Mendoza pleaded not guilty upon her arraignment[5] on June 4, 2003.

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[1] *Rollo*, pp. 13-15.

[2] *Id.* at 2-12; penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Celia C. Librea-Leagogo and Antonio L. Villamor, concurring.

[3] CA *rollo*, pp. 11-17.

[4] Records, p. 1.

[5] *Id.* at 12.

On August 5, 2003, the pre-trial conference was terminated without any stipulations or markings,[6] as the parties jointly manifested that they will mark their respective documentary and physical evidence during the course of the trial.[7] Thus, trial on the merits immediately followed, with the prosecution calling as witness Police Inspector Judycel Macapagal (Macapagal), the forensic chemist of the Western Police District (WPD), United Nations Avenue, Manila, who examined the specimen, which is the subject matter of this case.[8] Her testimony was dispensed with after the defense admitted to the following:

1. That Macapagal was an expert in the field of science;[9]
2. That there is a letter dated May 12, 2003,[10] requesting for the laboratory examination of one heat-sealed small, transparent, plastic sachet containing white crystalline substance, marked as "SOG-1";
3. That Macapagal, after examining the contents of the plastic sachet, placed such sachet in a small brown envelope, which she signed, dated, and sealed with a staple wire;
4. That the contents of the plastic sachet, as retrieved from the brown envelope, weighed 0.159 grams; and
5. That a qualitative examination of the white crystalline substance in the plastic sachet yielded positive for presence of methylamphetamine hydrochloride, as shown in Chemistry Report No. D-1058-03, issued by Macapagal.[11]

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[6] *Id.* at 21.

[7] *Id.* at 23.

[8] TSN, August 5, 2003, p. 2.

[9] *Id.* at 3.

[10] Records, p. 85.

[11] TSN, August 5, 2003, pp. 4-5.

The prosecution then presented their version of the events, as stated in the Affidavit of Apprehension,[12] which was executed by Police Inspector Israel Mangilit (Mangilit), Police Officer (PO) 3 Randy Ching (Ching), and PO2 Gerardo Talusan; and testified to by Mangilit[13] and Ching,[14] summarized as follows:

At around 12:20 p.m. of May 12, 2003, the Special Operations Group (SOG) of the WPD, U.N. Avenue, Manila received information from a confidential informant that one Emily Mendoza, a pregnant woman, was selling *shabu* in Gagalangin, Tondo, Manila. Acting on this information, Mangilit immediately formed a buy-bust operation team, with Ching as the *poseur*-buyer. Mangilit gave Ching a five-hundred-peso (₱500.00) bill, the serial number of which was noted, to be used as the buy-bust money. The team, composed of Mangilit, Ching, and Talusan, together with the informant, first coordinated with the *Barangay* Chairman of Gagalangin, Tondo, before proceeding to Benita St., where Mendoza was to be found. Mangilit and Talusan placed themselves at a viewing distance, while Ching and the informant approached Mendoza. The informant introduced Ching to Mendoza as a buyer, and in return, Mendoza asked how much he would buy. After Ching told her that he would be buying ₱500.00 worth of *shabu*, Mendoza handed him one plastic sachet containing white crystalline substance. Ching then gave her the ₱500.00 bill, and executed the pre-arranged signal to inform his team of the completed transaction. Thereafter, the team read Mendoza her constitutional rights and the nature of the accusation against her before arresting her. In the meantime, Ching marked the plastic sachet he bought from Mendoza with "SOG-1", while Talusan recovered the ₱500.00 bill from Mendoza's coin purse. Afterwards, Ching brought the Request for Laboratory Examination[15] and the specimen to the chief of

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[12] Records, p. 8.

[13] TSN, August 5, 2003, pp. 6-31.

[14] TSN, November 6, 2004, pp. 2-21.

[15] Records, p. 4.

the WPD Crime Laboratory. The results of the laboratory examination, as stated in Chemistry Report No. D-1058-03, and as testified to by Macapagal, are as follows:

TIME AND DATE RECEIVED: 1520H 12 May 2003

REQUESTING PARTY/UNIT: Chief, CHISRU Branch
SOG=City Hall, Manila

SPECIMEN SUBMITTED:

A – One (1) heat-sealed transparent plastic sachet with marking "SOG-1" containing 0.159 gram of white crystalline substance. x x x.

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs. x x x.

F I N D I N G S :

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for Methylamphetamine hydrochloride, a dangerous drug. x x x.

C O N C L U S I O N :

Specimen A contains Methylamphetamine hydrochloride, a dangerous drug. x x x.

REMARKS:

TIME AND DATE COMPLETED: 1720H 12 May 2003[16]

After the prosecution rested its case, the defense presented Mendoza to refute and disprove the material allegations made against her. Mendoza denied that she sold *shabu* to Ching. She alleged that she was in front of her house, waiting for her aunt, when a man, whom she had never seen before, and whom she had not seen during the trial, asked her about the owner of a video game. She told the man that it was her neighbor. The man inquired further about the pusher of *shabu*, to which she claimed lack of knowledge. The man then asked if she could be invited to the precinct. Mendoza said she asked the man why she was being invited, but the man allegedly told her to

[16] *Id.* at 86.

just explain at the precinct. She tried to resist but the man reportedly forced her to go with him to the SOG, Manila City Hall, via a sidecar. Upon reaching the police station, she was subjected to an inquest when she refused to give the man fifty thousand pesos (₱50,000.00).[17]

On March 20, 2007, the RTC rendered its Decision, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the court hereby finds the accused, **GUILTY**, of the crime charged against her, beyond reasonable doubt, and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).
>
> The *shabu*, subject of this case, is hereby forfeited in favor of the State and ordered destroyed pursuant to existing Rules.[18]

In convicting Mendoza of violating Section 5 of Republic Act No. 9165, the RTC held that the prosecution was able to establish and prove the elements in the sale of illegal drugs. The RTC said that the prosecution's version of the events was "positive, probable, and in accord with human experience."[19] The RTC also applied the presumption of regularity in the performance of official duties, as Mendoza failed to show that Mangilit and Ching, in testifying against her, "were motivated by reasons other than the duty to curb the sale of dangerous drugs."[20] Finally, the RTC averred that Mendoza's denial and cry of frame-up deserve no merit as not only was she unable to present any sufficient evidence to support them, but they are also weak defenses disfavored by this Court.[21]

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[17] TSN, November 23, 2006, pp. 2-7.

[18] CA *rollo*, pp. 16-17.

[19] *Id.* at 15.

[20] *Id.*

[21] *Id.* at 16.

On March 29, 2007, Mendoza filed her Notice of Appeal[22] with the RTC. Mendoza anchored her appeal on the following errors:

I

THE TRIAL COURT GRAVELY ERRED FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE ON THE EVIDENCE OF THE PROSECUTION AND DISREGARDING ACCUSED-APPELLANT'S DEFENSE.[23]

On July 21, 2009, the Court of Appeals promulgated its Decision, affirming the RTC's judgment of conviction, to wit:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The assailed Decision dated March 20, 2007 of the Regional Trial Court, Branch 23, Manila in Crim. Case No. 03-214163 is hereby **AFFIRMED**.[24]

The Court of Appeals found Mendoza's appeal bereft of merit as the prosecution was able to establish the elements of the charge against her. It deemed as waived Mendoza's argument that the police officers failed to establish the identity of the *corpus delicti* as it was raised for the first time on appeal.[25] The Court of Appeals further agreed with the RTC that absent a showing of ill motive on the part of the police officers, their testimonies deserve full faith and credit and the presumption that they regularly performed their duties must be upheld.[26]

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[22] Records, p. 82.

[23] CA *rollo*, p. 38A.

[24] *Rollo*, p. 12.

[25] *Id.* at 6.

[26] *Id.* at 10.

Undeterred, Mendoza elevated her case to this Court, with the same issues she raised before the Court of Appeals.[27]

Discussion

Mendoza was charged and convicted for selling methylamphetamine hydrochloride, more popularly known as *shabu*, in violation of Section 5, Article II of Republic Act No. 9165 or the Dangerous Drugs Law, which provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

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[27] *Id.* at 25-27.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

Mendoza posits that her guilt was not proven beyond reasonable doubt as the prosecution failed to establish the identity of the dangerous drug with certainty. She claims that "[t]he arresting officers [did not] comply with the proper custody and disposition of the seized and confiscated plastic sachet" under Section 21 of Republic Act No. 9165. Mendoza further argues that the prosecution failed to prove how the seized drug reached the forensic chemist for examination. She also avers that the police officers did not conduct any inventory or take pictures of the plastic sachet. [28] Moreover, Mendoza avers, no *barangay* official or representative from the media was present during the buy-bust operation, and no coordination with the PDEA, within the time specified in the rules, was done.[29]

Proof of corpus delicti

Section 21 of Republic Act No. 9165 reads as follows:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs,

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[28] CA *rollo*, Appellant's Brief, pp. 6-8.

[29] *Id.* at 11.

plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

Its Implementing Rules and Regulations state:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.] (Emphasis supplied.)

This Court has, in many cases, held that while the chain of custody should ideally be perfect, in reality it is not, "as it is almost always impossible to obtain an unbroken chain."[30] The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.[31] Hence, the prosecution's failure to submit in evidence the physical inventory and photograph of the seized drugs as required under Article 21 of Republic Act No. 9165, will not render Mendoza's arrest illegal or the items seized from her inadmissible.[32]

In the case at bar, it was shown that the integrity and evidentiary value of the seized drugs had been preserved. The prosecution had submitted enough evidence to account for the crucial links in the chain of custody of the seized *shabu*, starting from its confiscation from Mendoza up to its presentation as evidence in the RTC.

The records would indicate that the plastic sachet containing *shabu* was marked, kept, and delivered to the forensic chemist by the same officer who received it from Mendoza. Ching, the poseur-buyer, marked the plastic sachet he bought from Mendoza with "SOG-1" after the buy-bust team arrested her. Thereafter, the marked plastic sachet, together with the laboratory request, was delivered by Ching himself to Macapagal for examination. Macapagal's Chemistry Report showed that she received a plastic sachet marked "SOG-1" for examination at around 3:20 p.m. After she completed her examination at 5:20 p.m., she placed the same marked plastic sachet in a small brown envelope, which she in turn dated, signed, and sealed with a staple wire.

It is therefore clear, that the prosecution was able to account for each link in the chain of custody over the *shabu*, from the

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[30] *Asiatico v. People*, G.R. No. 195005, September 12, 2011.

[31] *People v. Campomanes*, G.R. No. 187741, August 9, 2010, 627 SCRA 494, 507.

[32] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 436.

moment it was seized from Mendoza, up to the time it was presented during the trial as proof of the *corpus delicti*.

In any case, unless Mendoza can show that there was bad faith, ill will, or tampering with the evidence, the presumption that the integrity of the evidence has been preserved will be upheld. It is upon Mendoza to show the foregoing to overcome the presumption that the police officers handled the seized drugs with regularity, and that they properly performed their duties.[33] This burden, she failed to discharge.

Moreover, as the Court of Appeals said, Mendoza only questioned the chain of custody when she appealed her conviction. This issue was neither raised nor mentioned during the trial before the RTC. Whatever justifiable ground may excuse the prosecution from complying with the statutory requirements on chain of custody will remain in obscurity but will not adversely affect the prosecution's case if not timely questioned during the trial. In *People v. Sta. Maria*,[34] the Court held:

> The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. 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.[35]

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[33] *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 647.

[34] G.R. No. 171019, February 23, 2007, 516 SCRA 621.

[35] *Id.* at 633-634.

It is also worthy to note the fact that Mendoza has not ascribed any improper motive on the part of the police officers as to why they would choose to implicate her in a very serious crime. Mendoza herself admitted that she had not seen any of the police officers who testified against her prior to the trial. As the RTC pronounced, she has not shown that Ching and Mangilit were motivated by reasons other than their duty to curb the sale of prohibited drugs.[36] Thus, it is only right that until Mendoza can show clear and convincing evidence that the members of the buy-bust operation team were motivated illicitly, or had failed to properly perform their duties, their testimonies deserve full faith and credit.[37]

Coordination with PDEA

Mendoza likewise assails the legality of her arrest as no coordination with PDEA was done. Section 86 of the Dangerous Drugs Law states:

Section 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions*. – The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

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[36] *People v. Lee*, 407 Phil. 250, 260 (2001).

[37] *People v. Valencia*, 439 Phil. 561, 567 (2002).

Its Implementing Rules and Regulations read:

SECTION 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions*.— The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished, however, they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, that such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of the Act: Provided, that personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in the Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, that when the investigation being conducted by the NBI, the PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of the Act, the PDEA shall be the lead agency. The NBI, the PNP or any of the task force shall immediately transfer the same to the PDEA; Provided, further, that the NBI, the PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

(a) Relationship/Coordination between PDEA and Other Agencies. — The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: Provided, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; Provided, further, that, in any case, said agencies

> shall inform the PDEA of their anti-drug operations within twenty-four (24) hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; Provided, furthermore, that raids, seizures, and other anti-drug operations conducted by the PNP, the NBI, and other law enforcement agencies prior to the approval of this IRR shall be valid and authorized; Provided, finally, that **nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court.** (Emphasis supplied.)

Lack of coordination with the PDEA will not invalidate a buy-bust operation. This Court has declared that coordination with the PDEA is not an indispensable requirement in buy-bust operations. Neither Section 86 of Republic Act No. 9165 nor its Implementing Rules and Regulations make PDEA's participation a condition *sine qua non* for the conduct of a buy-bust operation, especially since a buy-bust operation is merely a form of an *in flagrante* arrest, which is sanctioned by Section 5, Rule 113 of the Rules of Court.[38]

Elements of Illegal Sale of Dangerous Drugs

This Court has repeatedly held that the prosecution of the sale of dangerous drugs case is dependent on the satisfaction of the following elements:

> (1) [T]he identity of the buyer and the seller, the object, and the consideration; and
>
> (2) [T]he delivery of the thing sold and the payment therefor.[39]

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[38] *People v. Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359, 368-369.

[39] *People v. Tiu*, 469 Phil. 163, 173 (2004).

Simply put, "[w]hat is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*."[40]

This Court finds the prosecution to have established the foregoing elements.

A review of the records would show that Ching, the poseur-buyer, made a positive identification of Mendoza as the one who sold him the plastic sachet with white crystalline substance and to whom he gave the buy-bust money to during the entrapment operations. This was seconded by Mangilit, who also positively identified Mendoza as the subject of their buy-bust operation on May 12, 2003. Mendoza's weak defenses of denial and frame-up cannot prevail over such positive identification.[41]

This Court has invariably viewed the common and standard defenses of denial and frame-up in drugs cases with disfavor for being easily concocted.[42]

For a police officer to frame her up, he must have known her prior to the incident. However, the informant had to introduce Ching to Mendoza before the sale of the *shabu* took place. Mendoza testified that she did not know Ching or the other police officers prior to her arrest.[43] Moreover, Mendoza herself admitted that not only should she be considered as part of the urban poor, but that she also had no means of income. Her very circumstance belies her claim that the police officers charged her with this crime because she refused to pay the ₱50,000.00 they were allegedly extorting from her. For such defenses to succeed, they must be proven with strong and

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[40] *People v. Andres*, G.R. No. 193184, February 7, 2011, 641 SCRA 602, 608.

[41] *People v. Amansec*, G.R. No. 186131, December 14, 2011.

[42] *People v. Bandang*, G.R. No. 151314, June 3, 2004, 430 SCRA 570.

[43] *Id.* at 589-590.

convincing evidence.[44] Mendoza has not given this Court anything except her bare assertions.

WHEREFORE, premises considered, the Court hereby **AFFIRMS** the July 21, 2009 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02725.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. Nos. 191288 & 191304. February 29, 2012]

MANILA ELECTRIC COMPANY, *petitioner, vs.* **JAN CARLO GALA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION (NLRC); TECHNICAL RULES OF PROCEDURE IN LABOR CASES MAY BE RELAXED TO SERVE THE DEMANDS OF SUBSTANTIAL JUSTICE; APPLICATION IN CASE AT BAR.— We stress at this point that it is the spirit and intention of labor legislation that the NLRC and the labor arbiters shall use every reasonable means to ascertain the

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[44] *People v. Lazaro, Jr.,* G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

[*] Per Special Order No. 1207 dated February 23, 2012.

facts in each case speedily and objectively, without regard to technicalities of law or procedure, provided due process is duly observed. In keeping with this policy and in the interest of substantial justice, we deem it proper to give due course to the petition, especially in view of the conflict between the findings of the labor arbiter, on the one hand, and the NLRC and the CA, on the other. As we said in S.S. *Ventures International, Inc. v. S.S. Ventures Labor Union,* "the application of technical rules of procedure in labor cases may be relaxed to serve the demands of substantial justice."

2. ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; PROBATIONARY EMPLOYEE; INABILITY TO PASS THE REQUIREMENT OF PROBATIONARY EMPLOYMENT AGREEMENT JUSTIFIES FAILURE TO QUALIFY AS REGULAR EMPLOYEE; PRESENT IN CASE AT BAR.— The totality of the circumstances obtaining in the case convinces us that Gala could not but have knowledge of the pilferage of company electrical supplies on May 25, 2006; he was complicit in its commission, if not by direct participation, certainly, by his inaction while it was being perpetrated and by not reporting the incident to company authorities. Thus, we find substantial evidence to support the conclusion that Gala does not deserve to remain in Meralco's employ as a regular employee. He violated his probationary employment agreement, especially the requirement for him "to observe at all times the highest degree of transparency, selflessness and integrity in the performance of their duties and responsibilities[.]" He failed to qualify as a regular employee.

APPEARANCES OF COUNSEL

De La Rosa & Nograles for petitioner.
Noel V. Neri for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*,[1] seeking to annul the decision[2] dated August 25, 2009 and the resolution[3] dated February 10, 2010 of the Court of Appeals (CA) rendered in CA-G.R. SP. Nos. 105943 and 106021.

The Antecedents

The facts are summarized below.

On March 2, 2006, respondent Jan Carlo Gala commenced employment with the petitioner Meralco Electric Company (*Meralco*) **as a probationary lineman**. He was assigned at Meralco's Valenzuela Sector. He initially served as member of the crew of Meralco's Truck No. 1823 supervised by Foreman Narciso Matis. After one month, he joined the crew of Truck No. 1837 under the supervision of Foreman Raymundo Zuñiga, Sr.

On July 27, 2006, barely four months on the job, Gala was dismissed for alleged complicity in pilferages of Meralco's electrical supplies, particularly, for the incident which took place on May 25, 2006. On that day, Gala and other Meralco workers were instructed to replace a worn-out electrical pole at the Pacheco Subdivision in Valenzuela City. Gala and the other linemen were directed to join Truck No. 1891, under the supervision of Foreman Nemecio Hipolito.

When they arrived at the worksite, Gala and the other workers saw that Truck No. 1837, supervised by Zuñiga, was already there. The linemen of Truck No. 1837 were already at work. Gala and the other members of the crew of Truck No. 1891

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[1] *Rollo,* pp. 10-44.

[2] *Id.* at 52-64; penned by Associate Justice Ricardo R. Rosario, and concurred in by Associate Justices Martin S. Villarama, Jr. and Magdangal M. de Leon.

[3] *Id.* at 66-67.

were instructed to help in the digging of a hole for the pole to be installed.

While the Meralco crew was at work, one Noberto "Bing" Llanes, a non-Meralco employee, arrived. He appeared to be known to the Meralco foremen as they were seen conversing with him. Llanes boarded the trucks, without being stopped, and took out what were later found as electrical supplies. Aside from Gala, the foremen and the other linemen who were at the worksite when the pilferage happened were later charged with misconduct and dishonesty for their involvement in the incident.

Unknown to Gala and the rest of the crew, a Meralco surveillance task force was monitoring their activities and recording everything with a Sony video camera. The task force was composed of Joseph Aguilar, Ariel Dola and Frederick Riano.

Meralco called for an investigation of the incident and asked Gala to explain. Gala denied involvement in the pilferage, contending that even if his superiors might have committed a wrongdoing, he had no participation in what they did. He claimed that: (1) he was at some distance away from the trucks when the pilferage happened; (2) he did not have an inkling that an illegal activity was taking place since his supervisors were conversing with Llanes, giving him the impression that they knew him; (3) he did not call the attention of his superiors because he was not in a position to do so as he was a mere lineman; and (4) he was just following instructions in connection with his work and had no control in the disposition of company supplies and materials. He maintained that his mere presence at the scene of the incident was not sufficient to hold him liable as a conspirator.

Despite Gala's explanation, Meralco proceeded with the investigation and eventually terminated his employment on July 27, 2006.[4] Gala responded by filing an illegal dismissal complaint against Meralco.[5]

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[4] *Id.* at 80.

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

The Compulsory Arbitration Rulings

In a decision dated September 7, 2007,[6] Labor Arbiter Teresita D. Castillon-Lora dismissed the complaint for lack of merit. She held that Gala's participation in the pilferage of Meralco's property rendered him unqualified to become a regular employee.

Gala appealed to the National Labor Relations Commission (*NLRC*). In its decision of May 2, 2008,[7] the NLRC reversed the labor arbiter's ruling. It found that Gala had been illegally dismissed, since there was "no concrete showing of complicity with the alleged misconduct/dishonesty[.]"[8] The NLRC, however, ruled out Gala's reinstatement, stating that his tenure lasted only up to the end of his probationary period. It awarded him backwages and attorney's fees.

Both parties moved for partial reconsideration; Gala, on the ground that he should have been reinstated with full backwages, damages and interests; and Meralco, on the ground that the NLRC erred in finding that Gala had been illegally dismissed. The NLRC denied the motions. Relying on the same grounds, Gala and Meralco elevated the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

The CA Decision

In its decision of August 25, 2009,[9] the CA denied Meralco's petition for lack of merit and partially granted Gala's petition. It concurred with the NLRC that Gala had been illegally dismissed, a ruling that was supported by the evidence. It opined that nothing in the records show Gala's knowledge of or complicity in the pilferage. It found insufficient the joint affidavit[10] of the members of Meralco's task force testifying that Gala and two other linemen knew Llanes.

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[6] *Id.* at 149-159.

[7] *Id.* at 171-175.

[8] *Id.* at 174.

[9] *Supra* note 2.

[10] *Rollo,* pp. 72-76.

The CA modified the NLRC decision of May 2, 2008[11] and ordered Gala's reinstatement with full backwages and other benefits. The CA also denied Meralco's motion for reconsideration. Hence, the present petition for review on *certiorari*.[12]

The Petition

The petition is anchored on the ground that the CA seriously erred and gravely abused its discretion in –

1. ruling that Gala was illegally dismissed; and
2. directing Gala's reinstatement despite his probationary status.

Meralco faults the CA for not giving credit to its witnesses Aguilar, Dola and Riano, and instead treated their joint affidavit (*Samasamang Sinumpaang Salaysay*) as inconclusive to establish Gala's participation in the pilferage of company property on May 25, 2006. It submits that the affidavit of the three Meralco employees disproves the CA's findings, considering that their statements were based on their first-hand account of the incident during their day-long surveillance on May 25, 2006. It points out that the three Meralco employees categorically stated that all of the company's foremen and linemen present at that time, including Gala, had knowledge of the pilferage that was happening at the time. According to Aguilar, Dola and Riano, the trucks' crew, including Gala, was familiar with Llanes who acted as if his presence — particularly, that of freely collecting materials and supplies — was a regular occurrence during their operations.

Meralco maintains that Gala himself admitted in his own testimony[13] that he had been familiar with Llanes even before the May 25, 2006 incident where he saw Zuñiga, the foreman of Truck No. 1837, conversing with Llanes. Meralco submits that Gala's admission, instead of demonstrating "his feigned

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[11] *Supra* note 7.

[12] *Supra* note 1.

[13] *Rollo*, pp. 78-79.

innocence,"[14] even highlights his guilt, especially considering that by design, his misfeasance assisted Llanes in pilfering company property; Gala neither intervened to stop Llanes, nor did he report the incident to the Meralco management.

Meralco posits that because of his undeniable knowledge of, if not participation in, the pilferage activities done by their group, the company was well within its right in terminating his employment as a probationary employee for his failure to meet the basic standards for his regularization. The standards, it points out, were duly explained to him and outlined in his probationary employment contract. For this reason and due to the expiration of Gala's probationary employment, the CA should not have ordered his reinstatement with full backwages.

Finally, Meralco argues that even if Gala was illegally dismissed, he was entitled to just his backwages for the unexpired portion of his employment contract with the company.

Gala's Case

By way of his Comment (to the Petition) dated September 2, 2010,[15] Gala asks for a denial of the petition because of (1) serious and fatal infirmities in the petition; (2) unreliable statements of Meralco's witnesses; and (3) clear lack of basis to support the termination of his employment.

Gala contends, in regard to the alleged procedural defects of the petition, that the "Verification and Certification," "Secretary's Certificate" and "Affidavit of Service" do not contain the details of the Community or Residence Tax Certificates of the affiants, in violation of Section 6 of Commonwealth Act No. 465 (an Act to Impose a Residence Tax). Additionally, the lawyers who signed the petition failed to indicate their updated Mandatory Continuing Legal Education (*MCLE*) certificate numbers, in violation of the rules.

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[14] *Id.* at 31.

[15] *Id.* at 357-374.

With respect to the merits of the case, Gala bewails Meralco's reliance on the joint affidavit[16] of Aguilar, Dola and Riano not only because it was presented for the first time on appeal to the CA, but also because it was a mere afterthought. He explains that Aguilar and Dola were the very same persons who executed a much earlier sworn statement or transcription dated July 7, 2006. This earlier statement did not even mention Gala, but the later joint affidavit "splashes GALA's name in a desperate attempt to link him to an imagined wrongdoing."[17]

Zeroing in on what he believes as lack of credibility of Meralco's evidence, Gala posits that there is clear lack of basis for the termination of his employment. Thus, he wonders why Meralco did not present as evidence the video footage of the entire incident which it claims exists. He suspects that the footage was adverse to Meralco's position in the case.

Gala adds that the allegations of a "reported pilferage" or "rampant theft or pilferage" committed prior to May 25, 2006 by his superiors were not established, for even the labor arbiter did not make a finding on the foremen's involvement in the incident. He stresses that the same is true in his case as there is no proof of his participation in the pilferage.

Gala further submits that even if he saw Llanes on May 25, 2006 at about the time of the occurrence of the pilferage near or around the Meralco trucks, he was not aware that a wrongdoing was being committed or was about to be committed. He points out at that precise time, his superiors were much nearer to the trucks than he as he was among the crew digging a hole. He presumed at the time that his own superiors, being the more senior employees, could be trusted to protect company property.

Finally, Gala posits that his reinstatement with full backwages is but a consequence of the illegality of his dismissal. He argues that even if he was on probation, he is entitled to security of

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[16] *Supra* note 10.

[17] *Rollo,* p. 360.

tenure. Citing *Philippine Manpower Services, Inc. v. NLRC,*[18] he claims that in the absence of any justification for the termination of his probationary employment, he is entitled to continued employment even beyond the probationary period.

The Court's Ruling

The procedural issue

Gala would want the petition to be dismissed outright on procedural grounds, claiming that the "Verification and Certification," "Secretary's Certificate" and "Affidavit of Service" accompanying the petition do not contain the details of the Community Tax Certificates of the affiants, and that the lawyers who signed the petition failed to indicate their updated MCLE certificate numbers, in violation of existing rules.

We stress at this point that it is the spirit and intention of labor legislation that the NLRC and the labor arbiters shall use every reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, provided due process is duly observed.[19] In keeping with this policy and in the interest of substantial justice, we deem it proper to give due course to the petition, especially in view of the conflict between the findings of the labor arbiter, on the one hand, and the NLRC and the CA, on the other. As we said in *S.S. Ventures International, Inc. v. S.S. Ventures Labor Union*,[20] "the application of technical rules of procedure in labor cases may be relaxed to serve the demands of substantial justice."

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[18] G.R. No. 98450, July 21, 1993, 224 SCRA 691.

[19] LABOR CODE, Article 221.

[20] G.R. No. 161690, July 23, 2008, 559 SCRA 435, 447 citing *Fiel v. Kris Security Systems, Inc*., G.R. No. 155875, April 3, 2003, 400 SCRA 533, 536, and *El Toro Security Agency, Inc. v. NLRC,* G.R. No. 114308, April 18, 1996, 256 SCRA 363, 366.

The substantive aspect of the case

We find merit in the petition.

Contrary to the conclusions of the CA and the NLRC, there is substantial evidence supporting Meralco's position that Gala had become unfit to continue his employment with the company. Gala was found, after an administrative investigation, to have failed to meet the standards expected of him to become a regular employee and this failure was mainly due to his "undeniable knowledge, if not participation, in the pilferage activities done by their group, all to the prejudice of the Company's interests."[21]

Gala insists that he cannot be sanctioned for the theft of company property on May 25, 2006. He maintains that he had no direct participation in the incident and that he was not aware that an illegal activity was going on as he was at some distance from the trucks when the alleged theft was being committed. He adds that he did not call the attention of the foremen because he was a mere lineman and he was focused on what he was doing at the time. He argues that in any event, his mere presence in the area was not enough to make him a conspirator in the commission of the pilferage.

Gala misses the point. He forgets that as a probationary employee, his overall job performance and his behavior were being monitored and measured in accordance with the standards (*i.e.,* the terms and conditions) laid down in his probationary employment agreement.[22] Under paragraph 8 of the agreement, he was subject to strict compliance with, and non-violation of the Company Code on Employee Discipline, Safety Code, rules and regulations and existing policies. Par. 10 required him to observe at all times the highest degree of transparency, selflessness and integrity in the performance of his duties and responsibilities, free from any form of conflict or contradicting with his own personal interest.

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[21] *Supra* note 1, at 34.

[22] *Rollo,* pp. 68-71.

The evidence on record established Gala's presence in the worksite where the pilferage of company property happened. It also established that it was not only on May 25, 2006 that Llanes, the pilferer, had been seen during a Meralco operation. He had been previously noticed by Meralco employees, including Gala (based on his admission),[23] in past operations. If Gala had seen Llanes in earlier projects or operations of the company, it is incredulous for him to say that he did not know why Llanes was there or what Zuñiga and Llanes were talking about. To our mind, the Meralco crew (the foremen and the linemen) allowed or could have even asked Llanes to be there during their operations for one and only purpose — to serve as their conduit for pilfered company supplies to be sold to ready buyers outside Meralco worksites.

The familiarity of the Meralco crew with Llanes, a non-Meralco employee who had been present in Meralco field operations, does not contradict at all but rather support the Meralco submission that there had been "reported pilferage" or "rampant theft," by the crew, of company property even before May 25, 2006. Gala downplays this particular point with the argument that the labor arbiter made no such finding as she merely assumed it to be a fact,[24] her only "basis" being the statement that "*may natanggap na balita na ang mga crew na ito ay palagiang hindi nagsasauli ng mga electric facilities na kanilang ginagamit o pinapalitan bagkus ito ay ibinenta palabas*."[25] Gala impugns the statement as hearsay. He also wonders why Meralco's supposed "video footage" of the incident on May 25, 2006 was never presented in evidence.

The established fact that Llanes, a non-Meralco employee, was often seen during company operations, conversing with the foremen, for reason or reasons connected with the ongoing

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[23] *Supra* note 13.

[24] *Supra* note 15, at 363.

[25] *Ibid*.

company operations, gives rise to the question: what was he doing there? Apparently, he had been visiting Meralco worksites, at least in the Valenzuela Sector, not simply to socialize, but to do something else. As testified to by witnesses, he was picking up unused supplies and materials that were not returned to the company. From these factual premises, it is not hard to conclude that this activity was for the mutual pecuniary benefit of himself and the crew who tolerated the practice. For one working at the scene who had seen or who had shown familiarity with Llanes (a non-Meralco employee), not to have known the reason for his presence is to disregard the obvious, or at least the very suspicious.

We consider, too, and we find credible the company submission that the Meralco crew who worked at the Pacheco Subdivision in Valenzuela City on May 25, 2006 had not been returning unused supplies and materials, to the prejudice of the company. From all these, the allegedly hearsay evidence that is not competent in judicial proceedings (as noted above), takes on special meaning and relevance.

With respect to the video footage of the May 25, 2006 incident, Gala himself admitted that he viewed the tape during the administrative investigation, particularly in connection with the accusation against him that he allowed Llanes (*binatilyong may kapansanan sa bibig*) to board the Meralco trucks.[26] The choice of evidence belongs to a party and the mere fact that the video was shown to Gala indicates that the video was not an evidence that Meralco was trying to suppress. Gala could have, if he had wanted to, served a subpoena for the production of the video footage as evidence. The fact that he did not does not strengthen his case nor weaken the case of Meralco.

On the whole, the totality of the circumstances obtaining in the case convinces us that Gala could not but have knowledge of the pilferage of company electrical supplies on May 25,

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[26] *Supra* note 13, at 78.

2006; he was complicit in its commission, if not by direct participation, certainly, by his inaction while it was being perpetrated and by not reporting the incident to company authorities. Thus, we find substantial evidence to support the conclusion that Gala does not deserve to remain in Meralco's employ as a regular employee. He violated his probationary employment agreement, especially the requirement for him "to observe at all times the highest degree of transparency, selflessness and integrity in the performance of their duties and responsibilities[.]"[27] He failed to qualify as a regular employee.[28]

For ignoring the evidence in this case, the NLRC committed grave abuse of discretion and, in sustaining the NLRC, the CA committed a reversible error.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed decision and resolution of the Court of Appeals are **SET ASIDE**. The complaint is **DISMISSED** for lack of merit.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.,* concur.

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[27] *Supra* note 22, at 69.

[28] LABOR CODE, Article 281.

SECOND DIVISION

[G.R. No. 193667. February 29, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARIAVIC ESPENILLA *Y* MERCADO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); LARGE SCALE ILLEGAL RECRUITMENT; ELEMENTS. — The essential elements of large scale illegal recruitment, to wit: a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of Republic Act No. 8042); and c) the offender committed the same against three (3) or more persons, individually or as a group, are present in this case. The prosecution adduced proof beyond reasonable doubt that the appellant enlisted the three (3) complainants for overseas employment without any license to do so.

2. ID.; ID.; ID.; IMPOSABLE PENALTY.— The penalty for large scale illegal recruitment is life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00. Thus, the RTC and the CA correctly imposed upon the appellant the penalty of life imprisonment and a ₱500,000.00 fine. The CA correctly deleted the accessory penalties of civil interdiction and perpetual absolute disqualification from the right of suffrage imposed by the RTC since such additional penalty is not part of the prescribed penalty for the offense.

3. ID.; REVISED PENAL CODE; ESTAFA; ELEMENTS.— The essential elements of estafa, to wit: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person, are present in

this case. The prosecution adduced proof beyond reasonable doubt that the complainants shelled out processing fees to the appellant due to her false representations of overseas jobs, which did not materialize.

4. ID.; ID.; ID.; PENALTY; APPLICATION OF THE INDETERMINATE SENTENCE LAW IN CASE AT BAR.— The appellant defrauded Cueto and Alviar in the amounts of ₱20,000.00 and ₱15,000.00, respectively. When the amount defrauded is over ₱12,000.00 but does not exceed ₱22,000.00, the imposable penalty is *prision correccional* maximum to *prision mayor* minimum. Applying the Indeterminate Sentence Law (*ISL*), we take the minimum term from the penalty next lower than the minimum prescribed by law, or anywhere within *prision correccional* minimum and medium (*i.e.*, from six [6] months and one [1] day to four [4] years and two [2] months). Thus, the RTC and the CA correctly fixed the minimum term for the two (2) counts of estafa at two (2) years, four (4) months and one (1) day of *prision correccional*, since this is within the range of *prision correccional* minimum and medium. The maximum term under the ISL shall be that which, in view of attending circumstances, could be properly imposed under the rules of the Revised Penal Code. x x x Since the amounts defrauded were more than ₱12,000.00 but not exceeding ₱22,000.00, and in the absence of any mitigating or aggravating circumstance, the maximum term shall be taken from the medium period of the penalty prescribed (*i.e.*, five [5] years, five [5] months, and eleven [11] days to six [6] years, eight [8] months, and twenty [20] days). Thus, the maximum term of five (5) years, five (5) months and eleven (11) days of *prision correccional*, actually imposed by the CA for each count of estafa, is proper.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BRION, *J.*:

We resolve the appeal, filed by accused Mariavic Espenilla *y* Mercado (*appellant*), from the April 20, 2010 decision of the Court of Appeals (*CA*) in CA-G.R. CR.-H.C. No. 03692.[1]

The RTC Ruling

In its July 22, 2008 decision,[2] the Regional Trial Court (*RTC*) of Parañaque City, Branch 274, convicted the appellant of large scale illegal recruitment[3] and two (2) counts of estafa.[4] The trial court believed the testimonies of complainants Loreto Cueto *y* Perez, Mariel Alviar *y* Nerpio and Mario Pagcaliwagan, pointing to the appellant as the person who recruited them and promised them employment in Ireland, in exchange for sums of money. The court also rejected the subsequent recantations of Alviar and Pagcaliwagan. It found that the appellant was not licensed to recruit workers for overseas employment, per the May 23, 2006 Certification of the Philippine Overseas Employment Administration.[5] It noted that the appellant defrauded Cueto and Alviar in the amounts of ₱20,000.00 and ₱15,000.00, respectively, thereby disregarding the appellant's uncorroborated denial. It acquitted the appellant of the crime of estafa committed against Pagcaliwagan since the latter admitted that he recovered his money from the appellant.

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[1] Penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias; *rollo*, pp. 2-33.

[2] Docketed as Criminal Case Nos. 04-1433, 04-1435 to 04-1437; *CA rollo*, pp. 84-97.

[3] Violation of Section 6 in relation to Section 7 of Republic Act No. (*RA*) 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995."

[4] REVISED PENAL CODE, Article 315, paragraph 2(a).

[5] *CA rollo*, p. 30.

For the crime of illegal recruitment, the RTC sentenced the appellant to suffer the penalty of life imprisonment and ordered her to pay a ₱500,000.00 fine, with the accessory penalties of civil interdiction and perpetual absolute disqualification from the right of suffrage. For the two (2) counts of estafa, it sentenced the appellant to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to four (4) years, two (2) months and one (1) day of *prision correccional*, as maximum, for each count, and to indemnify Cueto and Alviar the amounts of ₱20,000.00 and ₱15,000.00, respectively.

The CA Ruling

On intermediate appellate review, the CA affirmed the RTC's decision, giving full respect to the RTC's calibration of the testimonies of the witnesses, but deleted the accessory penalties of civil interdiction and perpetual absolute disqualification from the right of suffrage. It also modified the appellant's indeterminate penalty for the two (2) counts of estafa to two (2) years, four (4) months and one (1) day of *prision correccional*, as minimum, to five (5) years, five (5) months and eleven (11) days of *prision correccional*, as maximum, for each count.[6]

We now rule on the final review of the case.

Our Ruling

We dismiss the appeal.

We find no reason to reverse the findings of the RTC, as affirmed by the CA. The appellant is guilty of large scale illegal recruitment. The essential elements of large scale illegal recruitment, to wit: a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now

[6] *Supra* note 1.

Section 6 of Republic Act No. 8042); and c) the offender committed the same against three (3) or more persons, individually or as a group,[7] are present in this case. The prosecution adduced proof beyond reasonable doubt that the appellant enlisted the three (3) complainants for overseas employment without any license to do so.

The RTC and the CA correctly rejected the subsequent recantations of Alviar and Pagcaliwagan since these were made a year after their testimonies in court.[8] Also, Alviar failed to offer any explanation for her change of mind,[9] while Pagcaliwagan admitted that he recanted because the appellant returned the money he paid.[10] We have often stressed that recantations are frowned upon since a recantation is exceedingly unreliable; it is easily secured from a poor and ignorant witness, usually through intimidation or for monetary consideration.[11]

The penalty for large scale illegal recruitment is life imprisonment and a fine of not less than ₱500,000.00 nor more than ₱1,000,000.00.[12] Thus, the RTC and the CA correctly imposed upon the appellant the penalty of life imprisonment and a ₱500,000.00 fine. The CA correctly deleted the accessory penalties of civil interdiction and perpetual absolute disqualification from the right of suffrage imposed by the RTC since such additional penalty is not part of the prescribed penalty for the offense.[13]

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[7] *People v. Gallo*, G.R. No. 185277, March 18, 2010, 616 SCRA 162, 175-176; and *People v. Calimon*, G.R. No. 175229, January 29, 2009, 577 SCRA 116, 130.

[8] TSNs, July 20, 2005 and October 12, 2005.

[9] TSN, October 2, 2006, pp. 20-22.

[10] TSN, October 2, 2006, pp. 14, 16-19, 21.

[11] *People v. Salazar*, G.R. No. 181900, October 20, 2010, 634 SCRA 307, 317; and *Madali v. People*, G.R. No. 180380, August 4, 2009, 595 SCRA 274, 293.

[12] RA 8042, Section 7(b).

[13] *Rodolfo v. People*, G.R. No. 146964, August 10, 2006, 498 SCRA 377, 388.

The appellant is also guilty of two (2) counts of estafa. The essential elements of estafa, to wit: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person,[14] are present in this case. The prosecution adduced proof beyond reasonable doubt that the complainants shelled out processing fees to the appellant due to her false representations of overseas jobs, which did not materialize.

The appellant defrauded Cueto and Alviar in the amounts of ₱20,000.00 and ₱15,000.00, respectively. When the amount defrauded is over ₱12,000.00 but does not exceed ₱22,000.00, the imposable penalty is *prision correccional* maximum to *prision mayor* minimum.[15] Applying the Indeterminate Sentence Law (*ISL*), we take the minimum term from the penalty next lower than the minimum prescribed by law, or anywhere within *prision correccional* minimum and medium (*i.e.*, from six [6] months and one [1] day to four [4] years and two [2] months). Thus, the RTC and the CA correctly fixed the minimum term for the two (2) counts of estafa at two (2) years, four (4) months and one (1) day of *prision correccional*, since this is within the range of *prision correccional* minimum and medium.

The maximum term under the ISL shall be that which, in view of attending circumstances, could be properly imposed under the rules of the Revised Penal Code. To compute the minimum, medium and maximum periods of the prescribed penalty for estafa when the amount of fraud exceeds ₱12,000.00, the time included in *prision correccional* maximum to *prision mayor* minimum shall be divided into three equal portions, with each portion forming a period. Following this computation, the

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[14] *People of the Philippines v. Rosario "Rose" Ochoa*, G.R. No. 173792, August 31, 2011; and *People of the Philippines v. Dolores Ocden*, G.R. No. 173198, June 1, 2011.

[15] REVISED PENAL CODE, Article 315.

minimum period for *prision correccional* maximum to *prision mayor* minimum is from four (4) years, two (2) months, and one (1) day to five (5) years, five (5) months, and ten (10) days; the medium period is from five (5) years, five (5) months, and eleven (11) days to six (6) years, eight (8) months, and twenty (20) days; and the maximum period is from six (6) years, eight (8) months, and twenty-one (21) days to eight (8) years.[16]

Since the amounts defrauded were more than ₱12,000.00 but not exceeding ₱22,000.00, and in the absence of any mitigating or aggravating circumstance, the maximum term shall be taken from the medium period of the penalty prescribed (*i.e.*, five [5] years, five [5] months, and eleven [11] days to six [6] years, eight [8] months, and twenty [20] days). Thus, the maximum term of five (5) years, five (5) months and eleven (11) days of *prision correccional*, actually imposed by the CA for each count of estafa, is proper.

WHEREFORE, the April 20, 2010 decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03692 is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.,* concur.

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[16] *People of the Philippines v. Rosario "Rose" Ochoa, supra* note 14.

SECOND DIVISION

[G.R. No. 196830. February 29, 2012]

CESAR V. GARCIA, CARLOS RAZON, ALBERTO DE GUZMAN, TOMAS RAZON, OMER E. PALO, RIZALDE VALENCIA, ALLAN BASA, JESSIE GARCIA, JUANITO PARAS, ALEJANDRO ORAG, ROMMEL PANGAN, RUEL SOLIMAN, and CENEN CANLAPAN, represented by CESAR V. GARCIA, *petitioners, vs.* **KJ COMMERCIAL and REYNALDO QUE,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC); RULES OF PROCEDURE; MOTION TO REDUCE BOND; CONDITIONS REQUIRED.— The Rules of Procedure of the NLRC allows the filing of a motion to reduce bond subject to two conditions: (1) there is meritorious ground, and (2) a bond in a reasonable amount is posted.

2. ID.; ID.; ID.; FILING OF A MOTION TO REDUCE BOND AND COMPLIANCE WITH THE CONDITIONS STOP THE RUNNING OF THE PERIOD TO PERFECT AN APPEAL; JUSTIFIED.— The filing of a motion to reduce bond and compliance with the two conditions stop the running of the period to perfect an appeal. x x x The NLRC has full discretion to grant or deny the motion to reduce bond, and it may rule on the motion beyond the 10-day period within which to perfect an appeal. Obviously, at the time of the filing of the motion to reduce bond and posting of a bond in a reasonable amount, there is no assurance whether the appellant's motion is indeed based on "meritorious ground" and whether the bond he or she posted is of a "reasonable amount." Thus, the appellant always runs the risk of failing to perfect an appeal. Section 2, Article I of the Rules of Procedure of the NLRC states that, "These Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining

just, expeditious and inexpensive resolution and settlement of labor disputes." In order to give full effect to the provisions on motion to reduce bond, the appellant must be allowed to wait for the ruling of the NLRC on the motion even beyond the 10-day period to perfect an appeal. If the NLRC grants the motion and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, the appellant may still file a motion for reconsideration as provided under Section 15, Rule VII of the Rules. If the NLRC grants the motion for reconsideration and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, then the decision of the labor arbiter becomes final and executory.

3. ID.; ID.; ID.; THE BOND REQUIREMENT ON APPEALS MAY BE RELAXED WHEN THERE IS SUBSTANTIAL COMPLIANCE WITH THE RULES OF PROCEDURE; PRESENT IN CASE AT BAR.— In *Ong v. Court of Appeals*, the Court held that the bond requirement on appeals may be relaxed when there is substantial compliance with the Rules of Procedure of the NLRC or when the appellant shows willingness to post a partial bond. The Court held that, "While the bond requirement on appeals involving monetary awards has been relaxed in certain cases, this can only be done where there was substantial compliance of the Rules or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond." In the present case, KJ Commercial showed willingness to post a partial bond. In fact, it posted a ₱50,000 cash bond. In *Ong*, the Court held that, "Petitioner in the said case substantially complied with the rules by posting a partial surety bond of fifty thousand pesos issued by Prudential Guarantee and Assurance, Inc. while his motion to reduce appeal bond was pending before the NLRC." Aside from posting a partial bond, KJ Commercial immediately posted the full amount of the bond when it filed its motion for reconsideration of the NLRC's 9 March 2009 Decision.

APPEARANCES OF COUNSEL

Armando San Antonio for petitioners.
Rodil L.Millado for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 29 April 2011 Decision[2] of the Court of Appeals in CA-G.R. SP No. 115851, affirming the 8 February[3] and 25 June[4] 2010 Resolutions of the National Labor Relations Commission (NLRC) in NLRC-LAC-No. 12-004061-08. The NLRC set aside the 30 October 2008 Decision[5] of the Labor Arbiter in NLRC Case No. RAB-III-02-9779-06.

The Facts

Respondent KJ Commercial is a sole proprietorship. It owns trucks and engages in the business of distributing cement products. On different dates, KJ Commercial employed as truck drivers and truck helpers petitioners Cesar V. Garcia, Carlos Razon, Alberto De Guzman, Tomas Razon, Omer E. Palo, Rizalde Valencia, Allan Basa, Jessie Garcia, Juanito Paras, Alejandro Orag, Rommel Pangan, Ruel Soliman, and Cenen Canlapan (petitioners).

On 2 January 2006, petitioners demanded for a ₱40 daily salary increase. To pressure KJ Commercial to grant their demand, they stopped working and abandoned their trucks at the Northern Cement Plant Station in Sison, Pangasinan. They also blocked other workers from reporting to work.

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[1] *Rollo*, pp. 11-41.

[2] *Id.* at 48-55. Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Rosmari D. Carandang and Ramon R. Garcia, concurring.

[3] *Id.* at 149-157. Penned by Presiding Commissioner Herminio V. Suelo, with Commissioners Angelo Ang Palana and Numeriano D. Villena, concurring.

[4] *Id.* at 163-167.

[5] *Id.* at 102-119. Penned by Labor Arbiter Mariano L. Bactin.

On 3 February 2006, petitioners filed with the Labor Arbiter a complaint[6] for illegal dismissal, underpayment of salary and non-payment of service incentive leave and thirteenth month pay.

The Labor Arbiter's Ruling

In his 30 October 2008 Decision, the Labor Arbiter held that KJ Commercial illegally dismissed petitioners. The Labor Arbiter held:

> After a careful examination and evaluation of the facts and evidences adduced by both parties, we find valid and cogent reasons to declare that these complainants were illegally dismissed from their work to be entitled to their separation in lieu of reinstatement equivalent to their salary for one (1) month for every year of service and backwages from the time that they were terminated on January 2, 2006 up to the date of this Decision.
>
> We carefully examined the defense set up by the respondents that these complainants were not terminated from their employment but were the one [sic] who abandoned their work by staging strike and refused to perform their work as drivers of the trucks owned by the respondents on January 2, 2006, *vis-á-vis*, he [sic] allegations and claims of the complainants that when they asked for an increase of their salary for ₱40.00, they were illegally dismissed from their employment without due process, and we gave more credence and value to the allegations of the complainants that they were illegally dismissed from their employment without due process and did not abandoned [sic] their work as the respondents wanted to project. We examined the narration of facts of the respondents in their Position Paper and Supplemental Position Paper and we concluded that these complainants were actually terminated on January 2, 2006 and did not abandoned [sic] their jobs as claimed by the respondents when the respondents, in their Position Paper, admitted that their cement plant was shutdown on January 3, 2006 and when it resumed its operation on January 7, 2006, they ordered the other drivers to get the trucks in order that the hauling of the cements will not incur further delay and that their business will not be prejudiced.

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[6] *Id.* at 62.

Granting for the sake of discussion that indeed these complainants abandoned their work on January 2, 2006, why then that [sic] the cement plant was shutdown on January 3, 2006 and resumed operation on January 7, 2006, when there are fifty (50) drivers of the respondents and only thirteen (13) of them were allegedly stopped from working. Further, if these complainants actually abandoned their work, as claimed by the respondents, they miserably failed to show by substantial evidence that these complainants deliberately and unjustifiably refused to resume their employment.

x x x x x x x x x

The acts of these complainants in filing this instant case a month after they were terminated from their work is more than sufficient evidence to prove and show that they do not have the intention of abandoning their work. While we acknowledged the offer of the respondents for these complainants to return back to work during the mandatory conference, the fact that these complainants were illegally terminated and prevented from performing their work as truck drivers of the respondents and that there was no compliance with the substantive and procedural due process of terminating an employee, their subsequent offer to return to work will not cure the defect that there was already illegal dismissal committed against these complainants.[7]

KJ Commercial appealed to the NLRC. It filed before the NLRC a motion to reduce bond and posted a ₱50,000 cash bond.

The NLRC's Ruling

In its 9 March 2009 Decision,[8] the NLRC dismissed the appeal. The NLRC held:

Filed with respondents-appellants' Appeal Memorandum is a Motion to Reduce Appeal Bond and a cash bond of ₱50,000.00 only. x x x

We find no merit on [sic] the respondents-appellants' Motion. It must be stressed that under Section 6, Rule VI of the 2005 Revised

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[7] *Id.* at 108-111.

[8] *Id.* at 132-136.

Rules of this Commission, a motion to reduce bond shall only be entertained when the following requisites concur:

1. The motion is founded on meritorious ground; and

2. A bond of reasonable amount in relation to the monetary award is posted.

We note that while respondents-appellants claim that they could not possibly produce enough cash for the required appeal bond, they are unwilling to at least put up a property to secure a surety bond. Understandably, no surety agency would normally accept a surety obligation involving a substantial amount without a guarantee that it would be indemnified in case the surety bond posted is forfeited in favor of a judgment creditor. Respondents-appellants' insinuation that no surety company can finish the processing of a surety bond in ten days time is not worthy of belief as it is contrary to ordinary business experience. What is obvious is that respondents-appellants are not willing to accept the usual conditions of a surety agreement that is why no surety bond could be processed. The reduction of the required bond is not a matter of right o[n] the part of the movant but lies within the sound discretion of the NLRC upon showing of meritorious grounds x x x. In this case, we find that the instant motion is not founded on a meritorious ground. x x x Moreover, we note that the ₱50,000.00 cash bond posted by respondents-appellants which represents less than two (2) percent of the monetary award is dismally disproportionate to the monetary award of ₱2,612,930.00 and that the amount of bond posted by respondents-appellants is not reasonable in relation to the monetary award. x x x A motion to reduce bond that does not satisfy the conditions required under NLRC Rules shall not stop the running of the period to perfect an appeal x x x.

Conversely, respondents-appellants failed to perfect an appeal for failure to post the required bond.[9]

KJ Commercial filed a motion[10] for reconsideration and posted a ₱2,562,930 surety bond. In its 8 February 2010 Resolution, the NLRC granted the motion and set aside the Labor Arbiter's 30 October 2008 Decision. The NLRC held:

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

[10] *Id.* at 137-138.

x x x [T]his Commission opts to resolve and grant the Motion for Reconsideration filed by respondent-appellant seeking for reconsideration of Our Decision promulgated on March 9, 2009 dismissing the Appeal for non-perfection, there being an honest effort by the appellants to comply with putting up the full amount of the required appeal bond. Moreover, considering the merit of the appeal, by granting the motion for reconsideration, the paramount interest of justice is better served in the resolution of this case.

x x x x x x x x x

Going over the record of the case, this Commission noted that in respondents' Supplemental Position Paper, in denying complainants' imputation of illegal dismissal, respondents categorically alleged "..[.] that complainants were not illegally dismissed but on January 2, 2006, they abandoned their work by means of [']work stoppage['] or they engaged in an [']illegal strike['] when they demanded for a higher rate..[.] that while their respective assigned trucks were all in the cement plant ready to be loaded, complainants paralyzed respondents' hauling or trucking operation by staging a work stoppage at the premises of KJ Commercial compound by further blocking their co-drivers not to report for work." We have observed that despite these damaging allegations, complainants never bothered to dispute nor contradicted these material allegations. Complainants' silence on these material allegations consequently lends support to respondents-appellants['] contention that complainants were never dismissed at all but had stopped driving the hauler truck assigned to each of them when their demand for salary increase in the amount they wish was not granted by respondents-appellants.

Moreover, contrary to the findings of the Labor Arbiter, the purported shutdown of the cement plant being cited by the Labor Arbiter *a quo* as the principal cause of complainants' purported dismissal cannot be attributed to respondents because it was never established by evidence that respondents were the owner [sic] of the cement plant where complainants as truck drivers were hauling cargoes of cement with trucks owned by respondents whose business is confined to that of a cement distributor and cargo truck hauler. Based on the undisputed account of respondents-appellants, it appears that the cement plant was compelled to shut down because the hauling or trucking operation was paralyzed due to complainants' resort to work stoppage by refusing to drive their hauler trucks despite the order of the management for them to get the trucks which blockaded the cement plant.

Furthermore, a perusal of the complainants' position paper and amended position paper failed to allege the overt acts showing how they were in fact dismissed on 02 January 2006. The complainants had not even alleged that they were specifically told that they were dismissed after they demanded for a salary increase or any statement to that effect. Neither had they alleged that they were prevented from reporting for work. This only shows there was never a dismissal to begin with.

x x x x x x x x x

We cannot affirm the Labor Arbiter's conclusions absent showing a fact of termination or circumstances under which the dismissal was effected. Though only substantial evidence is required in proceedings before the Labor Arbiter to support a litigant's claim, the same still requires evidence separate and different, and something which supports the allegations affirmatively made. The complainants' claim that they were dismissed on 02 January 2006, absent proof thereof or any supporting evidence thereto is at best self serving.[11]

Petitioners filed a motion for reconsideration. In its 25 June 2010 Resolution, the NLRC denied the motion for lack of merit. The NLRC held:

We stress that it is within the power and discretion of this Commission to grant or deny a motion to reduce appeal bond. Having earlier denied the motion to reduce bond of the respondents-appellants, this Commission is not precluded from reconsidering its earlier Decision on second look when it finds meritorious ground to serve the ends of justice. Settled is the norm in the matter of appeal bonds that letter-perfect rules must yield to the broader interest of substantial justice x x x. In this case, the Decision of the Labor Arbiter had not really become final and executory as respondents timely filed a Memorandum of Appeal with a Motion to Reduce Appeal Bond and a partial appeal bond. Although the respondents[']appeal was dismissed, in the earlier decision, the same Decision was later reconsidered on considerations that the Labor Arbiter committed palpable errors in his findings and the monetary awards to the appellees are secured by a partial bond and then later, by an appeal bond for the full amount of the monetary awards.[12]

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[11] *Id.* at 150-156.

[12] *Id.* at 166.

Petitioners filed with the Court of Appeals a petition[13] for *certiorari* under Rule 65 of the Rules of Court.

The Court of Appeals' Ruling

In its 29 April 2011 Decision, the Court of Appeals dismissed the petition and affirmed the NLRC's 8 February and 25 June 2010 Resolutions. The Court of Appeals held:

> After scrupulously examining the contrasting positions of the parties, and the conflicting decisions of the labor tribunals, We find the records of the case bereft of evidence to substantiate the conclusions reached by the Labor Arbiter that petitioners were illegally dismissed from employment.
>
> While petitioners vehemently argue that they were unlawfully separated from work, records are devoid of evidence to show the fact of dismissal. Neither was there any evidence offered by petitioners to prove that they were no longer allowed to perform their duties as truck drivers or they were prevented from entering KJ Commercial's premises, except for their empty and general allegations that they were illegally dismissed from employment. Such bare and sweeping statement contains nothing but empty imputation of a fact that could hardly be given any evidentiary weight by this Court. At the very least, petitioners should have detailed or elaborated the circumstances surrounding their dismissal or substantiate their claims by submitting evidence to butress such contention. Without a doubt, petitioners' allegation of illegal dismissal has no leg to stand on. Accordingly, they should not expect this Court to swallow their asseveration hook, line and sinker in the absence of supporting proof. Allegation that one was illegally dismissed from work is not a magic word that once invoked will automatically sway this Court to rule in favor of the party invoking it. There must first be substantial evidence to prove that indeed there was illegal dismissal before the employer bears the burden to prove the contrary.[14]

Hence, the present petition.

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[13] *Id.* at 168-188.

[14] *Id.* at 53.

The Issue

Petitioners raise as issue that the Labor Arbiter's 30 October 2008 Decision became final and executory; thus, the NLRC's 8 February and 25 June 2010 Resolutions and the Court of Appeals' 29 April 2011 Decision are void for lack of jurisdiction. Petitioners claim that KJ Commercial failed to perfect an appeal since the motion to reduce bond did not stop the running of the period to appeal.

The Court's Ruling

The petition is unmeritorious.

When petitioners filed with the Court of Appeals a petition for *certiorari*, they did not raise as issue that the Labor Arbiter's 30 October 2008 Decision had become final and executory. They enumerated the issues in their petition:

GROUNDS FOR THE PETITION

I.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT REVERSED THE DECISION OF THE LABOR ARBITER *A QUO* AND PRONOUNCED THAT THE PETITIONERS WERE NOT ILLEGALLY DISMISSED DESPITE CLEAR AND SUBSTANTIAL EVIDENCE ON THE RECORDS SHOWING THAT COMPLAINANTS WERE REGULAR EMPLOYEES TO BE ENTITLED TO SECURITY OF TENURE AND WERE ILLEGALLY DISMISSED FROM THEIR EMPLOYMENT.

II.

THE NLRC HAS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT GIVE [sic] MUCH WEIGHT TO PRIVATE RESPONDENTS['] BASELESS ALLEGATIONS IN ITS [sic] MOTION FOR RECONSIDERATION WHEN IT [sic] ALLEGED THAT COMPLAINANTS HAD ABANDONED THEIR WORK BY MEANS OF "WORK STOPPAGE" OR THEY ENGAGED IN AN "ILLEGAL STRIKE" WHEN THEY DEMANDED FOR A HIGHER RATE.

III.

THE NLRC GRAVELY ERRED TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT CONCLUDED THAT "COMPLAINANTS PARALYZED HAULING OR TRUCKING OPERATION BY STAGING A WORK STOPPAGE AT THE PREMISES OF KJ COMMERCIAL COMPOUND BY FURTHER BLOCKING THEIR CO-DRIVERS NOT TO REPORT FOR WORK" WITHOUT A SINGLE EVIDENCE TO SUPPORT SUCH ALLEGATIONS OF PRIVATE RESPONDENTS.

IV.

THE NLRC GRAVELY ERRED WHEN IT CONCLUDED THAT THE PRINCIPAL CAUSE OF COMPLAINANTS' DISMISSAL WAS DUE TO THE PURPORTED SHUTDOWN OF THE CEMENT PLANT CITED BY THE LABOR ARBITER IN HIS DECISION.[15]

Accordingly, the Court of Appeals limited itself to the resolution of the enumerated issues. In its 29 April 2011 Decision, the Court of Appeals held:

Hence, petitioners seek recourse before this Court *via* this Petition for *Certiorari* challenging the NLRC Resolutions and raising the following issues:

I.

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT REVERSED THE DECISION OF THE LABOR ARBITER *A QUO* AND PRONOUNCED THAT PETITIONERS WERE NOT ILLEGALLY DISMISSED DESPITE CLEAR AND SUBSTANTIAL EVIDENCE ON THE RECORDS SHOWING THAT PETITIONERS WERE REGULAR EMPLOYEES TO BE ENTITLED TO SECURITY OF TENURE AND WERE ILLEGALLY DISMISSED FROM THEIR EMPLOYMENT.

II.

THE NLRC HAS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT GAVE MUCH WEIGHT TO

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[15] *Id.* at 174-176.

PRIVATE RESPONDENTS BASELESS ALLEGATIONS IN ITS [sic] MOTION FOR RECONSIDERATION WHEN IT [sic] ALLEGED THAT PETITIONERS HAD ABANDONED THEIR WORK BY MEANS OF "WORK STOPPAGE" OR THEY ENGAGED IN AN "ILLEGAL STRIKE" WHEN THEY DEMANDED FOR A HIGHER RATE.

III.

THE NLRC GRAVELY ERRED WHEN IT CONCLUDED THAT "PETITIONERS PARALYZED HAULING AND TRUCKING OPERATION BY STAGING A WORK STOPPAGE AT THE PREMISES OF KJ COMMERCIAL COMPOUND BY FURTHER BLOCKING THEIR CO-DRIVERS NOT TO REPORT FOR WORK" WITHOUT A SINGLE EVIDENCE TO SUPPORT SUCH ALLEGATIONS OF PRIVATE RESPONDENTS.

IV.

THE NLRC GRAVELY ERRED WHEN IT CONCLUDED THAT THE PRINCIPAL CAUSE OF PETITIONERS' DISMISSAL WAS DUE TO THE PURPORTED SHUTDOWN OF THE CEMENT PLANT CITED BY THE LABOR ARBITER IN HIS DECISION.[16]

Petitoners cannot, for the first time, raise as issue in their petition filed with this Court that the Labor Arbiter's 30 October 2008 Decision had become final and executory. Points of law, theories and arguments not raised before the Court of Appeals will not be considered by this Court. Otherwise, KJ Commercial will be denied its right to due process. In *Tolosa v. National Labor Relations Commission*,[17] the Court held:

Petitioner contends that the labor arbiter's monetary award has already reached finality, since private respondents were not able to file a timely appeal before the NLRC.

This argument cannot be passed upon in this appeal, because it was not raised in the tribunals *a quo*. Well-settled is the rule that issues not raised below cannot be raised for the first time

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[16] *Id.* at 51-52.

[17] 449 Phil. 271 (2003).

on appeal. Thus, points of law, theories, and arguments not brought to the attention of the Court of Appeals need not — and ordinarily will not — be considered by this Court. Petitioner's allegation cannot be accepted by this Court on its face; to do so would be tantamount to a denial of respondent's right to due process.

Furthermore, whether respondents were able to appeal on time is a question of fact that cannot be entertained in a petition for review under Rule 45 of the Rules of Court. In general, the jurisdiction of this Court in cases brought before it from the Court of Appeals is limited to a review of errors of law allegedly committed by the court *a quo*.[18] (Emphasis supplied)

KJ Commercial's filing of a motion to reduce bond and delayed posting of the ₱2,562,930 surety bond did not render the Labor Arbiter's 30 October 2008 Decision final and executory. The Rules of Procedure of the NLRC allows the filing of a motion to reduce bond subject to two conditions: (1) there is meritorious ground, and (2) a bond in a reasonable amount is posted. Section 6 of Article VI states:

No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal.

The filing of a motion to reduce bond and compliance with the two conditions stop the running of the period to perfect an appeal. In *McBurnie v. Ganzon*,[19] the Court held:

x x x [T]he bond may be reduced upon motion by the employer, this is subject to the conditions that (1) the motion to reduce the bond shall be based on meritorious grounds; and (2) a reasonable

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[18] *Id.* at 284-285.

[19] G.R. Nos. 178034, 178117, 186984 and 186985, 18 September 2009, 600 SCRA 658.

amount in relation to the monetary award is posted by the appellant, otherwise the filing of the motion to reduce bond shall not stop the running of the period to perfect an appeal.[20]

The NLRC has full discretion to grant or deny the motion to reduce bond,[21] and it may rule on the motion beyond the 10-day period within which to perfect an appeal. Obviously, at the time of the filing of the motion to reduce bond and posting of a bond in a reasonable amount, there is no assurance whether the appellant's motion is indeed based on "meritorious ground" and whether the bond he or she posted is of a "reasonable amount." Thus, the appellant always runs the risk of failing to perfect an appeal.

Section 2, Article I of the Rules of Procedure of the NLRC states that, "These Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining just, expeditious and inexpensive resolution and settlement of labor disputes." In order to give full effect to the provisions on motion to reduce bond, the appellant must be allowed to wait for the ruling of the NLRC on the motion even beyond the 10-day period to perfect an appeal. If the NLRC grants the motion and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, the appellant may still file a motion for reconsideration as provided under Section 15, Rule VII of the Rules. If the NLRC grants the motion for reconsideration and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, then the decision of the labor arbiter becomes final and executory.

In the present case, KJ Commercial filed a motion to reduce bond and posted a ₱50,000 cash bond. When the NLRC denied

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[20] *Id.* at 669.

[21] *Id.* at 671.

its motion, KJ Commercial filed a motion for reconsideration and posted the full ₱2,562,930 surety bond. The NLRC then granted the motion for reconsideration.

In any case, the rule that the filing of a motion to reduce bond shall not stop the running of the period to perfect an appeal is not absolute. The Court may relax the rule. In *Intertranz Container Lines, Inc. v. Bautista*,[22] the Court held:

> Jurisprudence tells us that in labor cases, an appeal from a decision involving a monetary award may be perfected only upon the posting of a cash or surety bond. The Court, however, has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) fundamental consideration of substantial justice; (2) prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved.[23]

In *Rosewood Processing, Inc. v. NLRC*,[24] the Court held:

> The perfection of an appeal within the reglementary period and in the manner prescribed by law is jurisdictional, and noncompliance with such legal requirement is fatal and effectively renders the judgment final and executory. The Labor Code provides:
>
> > ART. 223. *Appeal*. — Decisions, awards or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders.
> >
> > In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.
>
> Indisputable is the legal doctrine that the appeal of a decision involving a monetary award in labor cases may be perfected "only

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[22] G.R. No. 187693, 13 July 2010, 625 SCRA 75.

[23] *Id.* at 84.

[24] 352 Phil. 1013 (1998).

upon the posting of a cash or surety bond." The lawmakers intended the posting of the bond to be an indispensable requirement to perfect an employer's appeal.

However, in a number of cases, this Court has relaxed this requirement in order to bring about the immediate and appropriate resolution of controversies on the merits. Some of these cases include: "(a) counsel's reliance on the footnote of the notice of the decision of the labor arbiter that the aggrieved party may appeal within ten (10) working days; (b) fundamental consideration of substantial justice; (c) prevention of miscarriage of justice or of unjust enrichment, as where the tardy appeal is from a decision granting separation pay which was already granted in an earlier final decision; and (d) special circumstances of the case combined with its legal merits or the amount and the issue involved."

In *Quiambao vs. National Labor Relations Commission,* this Court ruled that a relaxation of the appeal bond requirement could be justified by substantial compliance with the rule.

In *Globe General Services and Security Agency vs. National Labor Relations Commission,* the Court observed that the NLRC, in actual practice, allows the reduction of the appeal bond upon motion of the appellant and on meritorious grounds; hence, petitioners in that case should have filed a motion to reduce the bond within the reglementary period for appeal.

That is the exact situation in the case at bar. Here, petitioner claims to have received the labor arbiter's Decision on April 6, 1993. On April 16, 1993, it filed, together with its memorandum on appeal and notice of appeal, a motion to reduce the appeal bond accompanied by a surety bond for fifty thousand pesos issued by Prudential Guarantee and Assurance, Inc. Ignoring petitioner's motion (to reduce bond), Respondent Commission rendered its assailed Resolution dismissing the appeal due to the late filing of the appeal bond.

The solicitor general argues for the affirmation of the assailed Resolution for the sole reason that the appeal bond, even if it was filed on time, was defective, as it was not in an amount "equivalent to the monetary award in the judgment appealed from." The Court disagrees.

We hold that petitioner's motion to reduce the bond is a substantial compliance with the Labor Code. This holding is consistent with the norm that letter-perfect rules must yield to the broader interest of substantial justice.[25]

In *Ong v. Court of Appeals*,[26] the Court held that the bond requirement on appeals may be relaxed when there is substantial compliance with the Rules of Procedure of the NLRC or when the appellant shows willingness to post a partial bond. The Court held that, "While the bond requirement on appeals involving monetary awards has been relaxed in certain cases, this can only be done where there was substantial compliance of the Rules or where the appellants, at the very least, exhibited willingness to pay by posting a partial bond."[27]

In the present case, KJ Commercial showed willingness to post a partial bond. In fact, it posted a ₱50,000 cash bond. In *Ong*, the Court held that, "Petitioner in the said case substantially complied with the rules by posting a partial surety bond of fifty thousand pesos issued by Prudential Guarantee and Assurance, Inc. while his motion to reduce appeal bond was pending before the NLRC."[28]

Aside from posting a partial bond, KJ Commercial immediately posted the full amount of the bond when it filed its motion for reconsideration of the NLRC's 9 March 2009 Decision. In *Dr. Postigo v. Philippine Tuberculosis Society, Inc.*,[29] the Court held:

x x x [T]he respondent immediately submitted a *supersedeas* bond with its motion for reconsideration of the NLRC resolution dismissing its appeal. In *Ong v. Court of Appeals*, we ruled that the aggrieved party may file the appeal bond within the ten-day reglementary period following the receipt of the resolution of the NLRC to forestall the

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[25] *Id.* at 1028-1031.

[26] 482 Phil. 170 (2004).

[27] *Id.* at 181.

[28] *Id.* at 181-182.

[29] 515 Phil. 601 (2006).

finality of such resolution. Hence, while the appeal of a decision involving a monetary award in labor cases may be perfected only upon the posting of a cash or surety bond and the posting of the bond is an indispensable requirement to perfect such an appeal, a relaxation of the appeal bond requirement could be justified by substantial compliance with the rule.[30]

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the 29 April 2011 Decision of the Court of Appeals in CA-G.R. SP No. 115851.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 197043. February 29, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANTONIO BALDOMAR *y* LISCANO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT OF THE WITNESSES' CREDIBILITY WHEN AFFIRMED BY THE COURT OF APPEALS IS GENERALLY NOT DISTURBED BY THE SUPREME COURT.— It is settled that this Court will not interfere with the trial court's assessment of the witnesses' credibility, absent any indication or showing that the trial court overlooked some material facts or gravely abused its discretion, especially where, as in this case, such assessment is affirmed by the CA. In the present case, we see no compelling reason to disturb the factual findings of the courts *a quo*.

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[30] *Id.* at 607-608.

2. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN PRESENT.— The lower courts correctly ruled that treachery attended the stabbing of the victims. The attacks were swift and sudden; the unsuspecting victims had no expectation of the coming assault, as they were asleep when they were attacked.

3. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; NEGATIVE AND SELF-SERVING EVIDENCE; EXPLAINED. — It is elementary that the defense of denial is outweighed by a positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitnesses testifying on the matter. Denial, like alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law.

4. CRIMINAL LAW; REVISED PENAL CODE; FRUSTRATED MURDER; PENALTY; APPLICATION OF INDETERMINATE SENTENCE LAW.— Under Article 61, paragraph 2 of the Revised Penal Code, the penalty for frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*. *Reclusion temporal* has a range of twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should be taken from the medium of *reclusion temporal*, since no aggravating or mitigating circumstances attended the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of *prision mayor* which is one degree lower than *reclusion temporal*. Prescinding from the foregoing discussion, the imposed indeterminate penalty 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, was proper.

5. ID.; ID.; ID.; ID.; PROPER INDEMNITIES, AWARDED.— In Criminal Case No. 125677-H, we affirm the awards of ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages in lieu of actual damages to Eulogio's heirs, as these amounts are in accord with current jurisprudence on murder cases when the penalty imposed is *reclusion perpetua* only. We additionally award ₱50,000.00 as civil indemnity to Eulogio's heirs, as this award is granted to the victim's heirs without need of proof other than the commission of the crime.

We also increase the amount of the awarded exemplary damages from ₱25,000.00 to ₱30,000.00 to conform to prevailing jurisprudence. In Criminal Case No. 125678, we order the appellant to pay the following amounts to German: ₱40,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱20,000.00 as exemplary damages.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BRION, *J.*:

We decide the appeal, filed by Antonio Baldomar *y* Liscano (*appellant*), from the December 22, 2010 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR.-H.C. No. 03815. The appealed decision affirmed the December 22, 2008 decision[2] of the Regional Trial Court (*RTC*) of Pasig City, Branch 262, finding the appellant guilty beyond reasonable doubt of the crimes of murder and frustrated murder in Criminal Case Nos. 125677-H and 125678, respectively.

In its December 22, 2008 decision, the RTC found the appellant guilty of murder for the death of Eulogio Leguin, and of frustrated murder for the serious wounding of German Irasga. It gave credence to the testimony of German that the appellant stabbed him in the chest while he was sleeping, and also at the back while he was running out of the house. It also believed German's declaration that the appellant stabbed Eulogio.

According to the trial court, German's testimony was supported by the testimonies of Nena Baldomar, Lita Leguin and Edgar Leguin, who all declared that they saw the appellant holding a

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[1] *Rollo*, pp. 2-14; penned by Associate Justice Isaias Dicdican, and concurred in by Associate Justices Stephen C. Cruz and Franchito N. Diamante.

[2] CA *rollo*, pp. 37-50.

dagger and standing near the head of the bloodied Eulogio. The RTC disregarded the appellant's denial in light of the positive identification by the witnesses. It likewise held that treachery attended the commission of the crimes, as the attacks on the victims were sudden and unexpected.

In Criminal Case No. 125677-H (murder), the RTC ordered the appellant to suffer the penalty of *reclusion perpetua*, and to pay Eulogio's heirs the amounts of ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱25,000.00 as exemplary damages. In Criminal Case No. 125678 (frustrated murder), the trial court ordered the appellant to suffer the indeterminate penalty 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.

On appeal, the CA affirmed the RTC decision. It held that German positively identified the appellant as the person who stabbed him and Eulogio. The appellate court also sustained the trial court's finding that treachery attended the attack on the two victims.

Our Ruling

We dismiss the appeal, but modify the awarded indemnities.

It is settled that this Court will not interfere with the trial court's assessment of the witnesses' credibility, absent any indication or showing that the trial court overlooked some material facts or gravely abused its discretion, especially where, as in this case, such assessment is affirmed by the CA. In the present case, we see no compelling reason to disturb the factual findings of the courts *a quo*.

German positively identified the appellant as the person who stabbed him in the chest while he was sleeping, and also at the back while he was running out of the house. He also pointed to the appellant as the person who stabbed Eulogio, causing the latter's death. German's testimony was supported by the testimonies of Nena, Lita and Edgar, all of whom testified that when they went to the *sala*, they saw the appellant holding a

bloodied knife in his right hand while standing near Eulogio's head. As the lower courts did, we see no reason to disbelieve the testimonies of these prosecution witnesses; their narrations were straightforward and replete with details that jibed on material points.

The lower courts correctly ruled that treachery attended the stabbing of the victims. The attacks were swift and sudden; the unsuspecting victims had no expectation of the coming assault, as they were asleep when they were attacked.

We are unpersuaded by the appellant's defense of denial. It is elementary that the defense of denial is outweighed by a positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitnesses testifying on the matter. Denial, like alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law.[3]

The Penalties

The crime of murder qualified by treachery is penalized under Article 248 of the Revised Penal Code, as amended, with *reclusion perpetua* to death. For the death of Eulogio, the lower courts correctly sentenced the appellant to suffer the penalty of *reclusion perpetua* only, since there were no aggravating or mitigating circumstances that attended the commission of the crime.

The courts *a quo* also imposed the correct penalty for frustrated murder in Criminal Case No. 125678. Under Article 61, paragraph 2 of the Revised Penal Code, the penalty for frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*. *Reclusion temporal* has a range of twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should be taken from the medium of *reclusion temporal*, since no aggravating or

[3] See *Malana v. People*, G.R. No. 173612, March 26, 2008, 549 SCRA 451, 465-466.

mitigating circumstances attended the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of *prision mayor* which is one degree lower than *reclusion temporal*. Prescinding from the foregoing discussion, the imposed indeterminate penalty 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, was proper.

The Proper Indemnities

In Criminal Case No. 125677-H, we affirm the awards of ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages in lieu of actual damages to Eulogio's heirs, as these amounts are in accord with current jurisprudence on murder cases when the penalty imposed is *reclusion perpetua* only. We additionally award ₱50,000.00 as civil indemnity to Eulogio's heirs, as this award is granted to the victim's heirs without need of proof other than the commission of the crime. We also increase the amount of the awarded exemplary damages from ₱25,000.00 to ₱30,000.00 to conform to prevailing jurisprudence.[4]

In Criminal Case No. 125678, we order the appellant to pay the following amounts to German: ₱40,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱20,000.00 as exemplary damages.[5]

WHEREFORE, the decision of the Court of Appeals dated December 22, 2010 in CA-G.R. CR.-H.C. No. 03815 is **AFFIRMED** with **MODIFICATIONS**. Appellant Antonio Baldomar *y* Liscano is found guilty beyond reasonable doubt of the crimes of murder in Criminal Case No. 125677-H and of frustrated murder in Criminal Case No. 125678.

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[4] See *People of the Philippines v. Larry Torres, Sr.*, G.R. No. 190317, August 22, 2011; and *People of the Philippines v. Rex Nimuan y Cacho*, G.R. No. 182458, March 21, 2011.

[5] See *People v. Mokammad*, G.R. No. 180594, August 19, 2009, 596 SCRA 497.

In Criminal Case No. 125677-H, the appellant is sentenced to suffer the penalty of *reclusion perpetua*, and is ordered to pay the victim's heirs the following amounts: ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages in lieu of actual damages. In Criminal Case No. 125678, the appellant is sentenced to suffer the indeterminate penalty 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, and is ordered to pay the victim the following amounts: ₱40,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱20,000.00 as exemplary damages.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 197788. February 29, 2012]

RODEL LUZ *Y* ONG, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES,**[1] *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; DEFINED.— Arrest is the taking of a person into custody in

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[1] The Petition was originally captioned as "*Rodel Luz y Ong v. Hon. Court of Appeals, Hon. Presiding Judge, Regional Trial Court, Branch 21, Naga City*." However, under Section 4, Rule 45 of the Rules of Court, the petition must state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents.

order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.

2. ID.; ID.; ID.; A DRIVER FLAGGED DOWN FOR COMMITTING TRAFFIC VIOLATION IS NOT A FORMAL ARREST.— Under R.A. 4136, or the Land Transportation and Traffic Code, the general procedure for dealing with a traffic violation is not the arrest of the offender, but the confiscation of the driver's license of the latter: x x x In *Berkemer v. McCarty*, the United States (US) Supreme Court discussed at length whether the roadside questioning of a motorist detained pursuant to a routine traffic stop should be considered custodial interrogation. The Court held that, such questioning does not fall under custodial interrogation, nor can it be considered a formal arrest, by virtue of the nature of the questioning, the expectations of the motorist and the officer, and the length of time the procedure is conducted. x x x The U.S. Court in *Berkemer* thus ruled that, since the motorist therein was only subjected to modest questions while still at the scene of the traffic stop, he was not at that moment placed under custody (such that he should have been apprised of his *Miranda* rights), and neither can treatment of this sort be fairly characterized as the functional equivalent of a formal arrest.

3. ID.; ID.; ID.; MIRANDA WARNINGS MUST ALSO BE GIVEN TO A PERSON IF HE IS ACTUALLY ARRESTED DUE TO A TRAFFIC VIOLATION; NOT PRESENT IN CASE AT BAR.— This Court has held that at the time a person is arrested, it shall be the duty of the arresting officer to inform the latter of the reason for the arrest and must show that person the warrant of arrest, if any. Persons shall be informed of their constitutional rights to remain silent and to counsel, and that any statement they might make could be used against them. It may also be noted that in this case, these constitutional

requirements were complied with by the police officers only *after* petitioner had been arrested for illegal possession of dangerous drugs. In *Berkemer*, the U.S. Court also noted that the *Miranda* warnings must also be given to a person apprehended due to a traffic violation:

4. POLITICAL LAW; BILL OF RIGHTS; SEARCHES AND SEIZURES; WARRANTLESS SEARCH, WHEN ALLOWED. — The following are the instances when a warrantless search is allowed: (i) a warrantless search incidental to a lawful arrest; (ii) search of evidence in "plain view;" (iii) search of a moving vehicle; (iv) consented warrantless search; (v) customs search; (vi) a "stop and frisk" search; and (vii) exigent and emergency circumstances.

5. ID.; ID.; ID.; ID.; ENUMERATIONS OF THE FACTORS TO BE CONSIDERED IN DETERMINING CONSENT TO THE SEARCH.— Whether consent to the search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances. Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether the defendant was in a public or a secluded location; (3) whether the defendant objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence would be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting. It is the State that has the burden of proving, by clear and positive testimony, that the necessary consent was obtained, and was freely and voluntarily given.

6. ID.; ID.; ID.; ID.; STOP AND FRISK IS MERELY A LIMITED PROTECTIVE SEARCH OF OUTER CLOTHING FOR WEAPONS.— While the "stop and frisk" rule normally applies when a police officer observes suspicious or unusual conduct, which may lead him to believe that a criminal act may be afoot, the stop and frisk is merely a limited protective search of outer clothing for weapons. In *Knowles v. Iowa*, the U.S. Supreme Court held that when a police officer stops a person for speeding and correspondingly issues a citation instead of arresting the

latter, this procedure does not authorize the officer to conduct a full search of the car. The Court therein held that there was no justification for a full-blown search when the officer does not arrest the motorist. Instead, police officers may only conduct minimal intrusions, such as ordering the motorist to alight from the car or doing a patdown.

7. ID.; ID.; ID.; ID.; EVIDENCE OBTAINED AS A RESULT OF UNREASONABLE SEARCHES AND SEIZURES SHALL BE INADMISSIBLE FOR ANY PURPOSE IN ANY PROCEEDING; APPLICATION IN CASE AT BAR.— While he may have failed to object to the illegality of his arrest at the earliest opportunity, a waiver of an illegal warrantless arrest does not, however, mean a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest. The Constitution guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. Any evidence obtained in violation of said right shall be inadmissible for any purpose in any proceeding. While the power to search and seize may at times be necessary to the public welfare, still it must be exercised and the law implemented without contravening the constitutional rights of citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government. The subject items seized during the illegal arrest are inadmissible. The drugs are the very *corpus delicti* of the crime of illegal possession of dangerous drugs. Thus, their inadmissibility precludes conviction and calls for the acquittal of the accused.

APPEARANCES OF COUNSEL

Rodolfo R. Ranion for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 seeking to set aside the Court of Appeals (CA) Decision in CA-

G.R. CR No. 32516 dated 18 February 2011[2] and Resolution dated 8 July 2011.

Statement of the Facts and of the Case

The facts, as found by the Regional Trial Court (RTC), which sustained the version of the prosecution, are as follows:

> PO2 Emmanuel L. Alteza, who was then assigned at the Sub-Station 1 of the Naga City Police Station as a traffic enforcer, substantially testified that on March 10, 2003 at around 3:00 o'clock in the morning, he saw the accused, who was coming from the direction of Panganiban Drive and going to Diversion Road, Naga City, driving a motorcycle without a helmet; that this prompted him to flag down the accused for violating a municipal ordinance which requires all motorcycle drivers to wear helmet (sic) while driving said motor vehicle; that he invited the accused to come inside their sub-station since the place where he flagged down the accused is almost in front of the said sub-station; that while he and SPO1 Rayford Brillante were issuing a citation ticket for violation of municipal ordinance, he noticed that the accused was uneasy and kept on getting something from his jacket; that he was alerted and so, he told the accused to take out the contents of the pocket of his jacket as the latter may have a weapon inside it; that the accused obliged and slowly put out the contents of the pocket of his jacket which was a nickel-like tin or metal container about two (2) to three (3) inches in size, including two (2) cellphones, one (1) pair of scissors and one (1) Swiss knife; that upon seeing the said container, he asked the accused to open it; that after the accused opened the container, he noticed a cartoon cover and something beneath it; and that upon his instruction, the accused spilled out the contents of the container on the table which turned out to be four (4) plastic sachets, the two (2) of which were empty while the other two (2) contained suspected *shabu*.[3]

Arraigned on 2 July 2003, petitioner, assisted by counsel, entered a plea of "Not guilty" to the charge of illegal possession of dangerous drugs. Pretrial was terminated on 24 September 2003, after which, trial ensued.

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[2] Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Hakim S. Abdulwahid and Samuel H. Gaerlan.

[3] *Rollo,* p. 91.

During trial, Police Officer 3 (PO3) Emmanuel Alteza and a forensic chemist testified for the prosecution. On the other hand, petitioner testified for himself and raised the defense of planting of evidence and extortion.

In its 19 February 2009 Decision,[4] the RTC convicted petitioner of illegal possession of dangerous drugs[5] committed on 10 March 2003. It found the prosecution evidence sufficient to show that he had been lawfully arrested for a traffic violation and then subjected to a valid search, which led to the discovery on his person of two plastic sachets later found to contain *shabu*. The RTC also found his defense of frame-up and extortion to be weak, self-serving and unsubstantiated. The dispositive portion of its Decision held:

> WHEREFORE, judgment is hereby rendered, finding accused RODEL LUZ *y* ONG *GUILTY* beyond reasonable doubt for the crime of violation of Section 11, Article II of Republic Act No. 9165 and sentencing him to suffer the indeterminate penalty of imprisonment ranging from twelve (12) years and (1) day, as minimum, to thirteen (13) years, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).
>
> The subject *shabu* is hereby confiscated for turn over to the Philippine Drug Enforcement Agency for its proper disposition and destruction in accordance with law.
>
> SO ORDERED.[6]

Upon review, the CA affirmed the RTC's Decision.

On 12 September 2011, petitioner filed under Rule 45 the instant Petition for Review on *Certiorari* dated 1 September 2011. In a Resolution dated 12 October 2011, this Court required respondent to file a comment on the Petition. On 4 January 2012, the latter filed its Comment dated 3 January 2012.

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[4] Docketed as Criminal Case No. RTC 2003-0087; *rollo*, pp. 90-102.

[5] *See* Section 11, Republic Act No. (R.A.) 9165, or the Comprehensive Dangerous Drugs Act of 2002.

[6] *Rollo*, p. 101.

Petitioner raised the following grounds in support of his Petition:

(i) THE SEARCH AND SEIZURE OF THE ALLEGED SUBJECT *SHABU* IS INVALID.

(ii) THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY OF THE POLICE OFFICER CANNOT BE RELIED UPON IN THIS CASE.

(iii) THE INTEGRITY AND EVIDENTIARY VALUE OF THE ALLEGED SUBJECT SPECIMEN HAS BEEN COMPROMISED.

(iv) THE GUILT OF THE ACCUSED-PETITIONER WAS NOT PROVEN BEYOND THE REASONABLE DOUBT *(sic)*.[7]

Petitioner claims that there was no lawful search and seizure, because there was no lawful arrest. He claims that the finding that there was a lawful arrest was erroneous, since he was not even issued a citation ticket or charged with violation of the city ordinance. Even assuming there was a valid arrest, he claims that he had never consented to the search conducted upon him.

On the other hand, finding that petitioner had been lawfully arrested, the RTC held thus:

> It is beyond dispute that the accused was flagged down and apprehended in this case by Police Officers Alteza and Brillante for violation of City Ordinance No. 98-012, an ordinance requiring the use of crash helmet by motorcycle drivers and riders thereon in the City of Naga and prescribing penalties for violation thereof. The accused himself admitted that he was not wearing a helmet at the time when he was flagged down by the said police officers, albeit he had a helmet in his possession. Obviously, there is legal basis on the part of the apprehending officers to flag down and arrest the accused because the latter was actually committing a crime in their presence, that is, a violation of City Ordinance No. 98-012. In other words, the accused, being caught *in flagrante delicto* violating the said Ordinance, he could therefore be lawfully stopped or arrested by the apprehending officers. x x x.[8]

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[7] *Rollo*, p. 23.

[8] *Id.* at 96.

We find the Petition to be impressed with merit, but not for the particular reasons alleged. In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.[9]

***First*, there was no valid arrest of petitioner.** When he was flagged down for committing a traffic violation, he was not, *ipso facto* and solely for this reason, arrested.

Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense.[10] It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.[11]

Under R.A. 4136, or the Land Transportation and Traffic Code, the general procedure for dealing with a traffic violation is not the arrest of the offender, but the confiscation of the driver's license of the latter:

SECTION 29. *Confiscation of Driver's License*. — Law enforcement and peace officers of other agencies duly deputized by the Director shall, in apprehending a driver for any violation of this Act or any regulations issued pursuant thereto, or of local traffic rules and regulations not contrary to any provisions of this Act, confiscate the license of the driver concerned and issue a receipt prescribed and issued by the Bureau therefor which shall authorize the driver to operate a motor vehicle for a period not exceeding seventy-two hours from the time and date of issue of said receipt.

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[9] *People v. Saludes*, 452 Phil. 719, 728 (2003).

[10] RULES OF COURT, Rule 113, Sec. 1.

[11] *People v. Milado*, 462 Phil. 411 (2003).

The period so fixed in the receipt shall not be extended, and shall become invalid thereafter. Failure of the driver to settle his case within fifteen days from the date of apprehension will be a ground for the suspension and/or revocation of his license.

Similarly, the Philippine National Police (PNP) Operations Manual[12] provides the following procedure for flagging down vehicles during the conduct of checkpoints:

SECTION 7. *Procedure in Flagging Down or Accosting Vehicles While in Mobile Car*. This rule is a general concept and will not apply in hot pursuit operations. The mobile car crew shall undertake the following, when applicable: x x x

m. If it concerns traffic violations, immediately issue a Traffic Citation Ticket (TCT) or Traffic Violation Report (TVR). Never indulge in prolonged, unnecessary conversation or argument with the driver or any of the vehicle's occupants;

At the time that he was waiting for PO3 Alteza to write his citation ticket, petitioner could not be said to have been "under arrest." There was no intention on the part of PO3 Alteza to arrest him, deprive him of his liberty, or take him into custody. Prior to the issuance of the ticket, the period during which petitioner was at the police station may be characterized merely as waiting time. In fact, as found by the trial court, PO3 Alteza himself testified that the only reason they went to the police sub-station was that petitioner had been flagged down "almost in front" of that place. Hence, it was only for the sake of convenience that they were waiting there. There was no intention to take petitioner into custody.

In *Berkemer v. McCarty*,[13] the United States (U.S.) Supreme Court discussed at length whether the roadside questioning of a motorist detained pursuant to a routine traffic stop should be considered custodial interrogation. The Court held that, such questioning does not fall under custodial interrogation, nor can it be considered a formal arrest, by virtue of the nature of the

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[12] PNPM-DO-DS-3-1 dated March 2010.

[13] 468 U.S. 420 (1984).

questioning, the expectations of the motorist and the officer, and the length of time the procedure is conducted. It ruled as follows:

> It must be acknowledged at the outset that a traffic stop significantly curtails the "freedom of action" of the driver and the passengers, if any, of the detained vehicle. Under the law of most States, it is a crime either to ignore a policeman's signal to stop one's car or, once having stopped, to drive away without permission. x x x
>
> However, we decline to accord talismanic power to the phrase in the Miranda opinion emphasized by respondent. Fidelity to the doctrine announced in Miranda requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated. Thus, we must decide whether a traffic stop exerts upon a detained person pressures that sufficiently impair his free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights.
>
> Two features of an ordinary traffic stop mitigate the danger that a person questioned will be induced "to speak where he would not otherwise do so freely," *Miranda v. Arizona*, 384 U. S., at 467. **First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief.** The vast majority of roadside detentions last only a few minutes. A motorist's expectations, when he sees a policeman's light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way. In this respect, questioning incident to an ordinary traffic stop is quite different from stationhouse interrogation, which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek. See *id.*, at 451.
>
> Second, **circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police**. To be sure, the aura of authority surrounding an armed, uniformed officer and the knowledge that the officer has some discretion in deciding whether to issue a citation, in combination, exert some pressure on the detainee to respond to questions. But other aspects of the situation substantially offset these forces. Perhaps most importantly, the typical traffic stop is public, at least to some degree. x x x

In both of these respects, **the usual traffic stop is more analogous to a so-called "Terry stop,"** see *Terry v. Ohio*, 392 U. S. 1 (1968), **than to a formal arrest.** x x x The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda. The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not "in custody" for the purposes of Miranda.

x x x x x x x x x

We are confident that the state of affairs projected by respondent will not come to pass. It is settled that the safeguards prescribed by Miranda become applicable as soon as a suspect's freedom of action is curtailed to a "degree associated with formal arrest." *California v. Beheler*, 463 U. S. 1121, 1125 (1983) (*per curiam*). If a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him "in custody" for practical purposes, he will be entitled to the full panoply of protections prescribed by Miranda. See *Oregon v. Mathiason*, 429 U. S. 492, 495 (1977) (*per curiam*). (Emphasis supplied.)

The U.S. Court in *Berkemer* thus ruled that, since the motorist therein was only subjected to modest questions while still at the scene of the traffic stop, he was not at that moment placed under custody (such that he should have been apprised of his *Miranda* rights), and neither can treatment of this sort be fairly characterized as the functional equivalent of a formal arrest. Similarly, neither can petitioner here be considered "under arrest" at the time that his traffic citation was being made.

It also appears that, according to City Ordinance No. 98-012, which was violated by petitioner, the failure to wear a crash helmet while riding a motorcycle is penalized by a fine only. Under the Rules of Court, a warrant of arrest need not be issued if the information or charge was filed for an offense penalized by a fine only. It may be stated as a corollary that neither can a warrantless arrest be made for such an offense.

This ruling does not imply that there can be no arrest for a traffic violation. Certainly, when there is an intent on the part of the police officer to deprive the motorist of liberty, or to

take the latter into custody, the former may be deemed to have arrested the motorist. In this case, however, the officer's issuance (or intent to issue) a traffic citation ticket negates the possibility of an arrest for the same violation.

Even if one were to work under the assumption that petitioner was deemed "arrested" upon being flagged down for a traffic violation and while awaiting the issuance of his ticket, then the requirements for a valid arrest were not complied with.

This Court has held that at the time a person is arrested, it shall be the duty of the arresting officer to inform the latter of the reason for the arrest and must show that person the warrant of arrest, if any. Persons shall be informed of their constitutional rights to remain silent and to counsel, and that any statement they might make could be used against them.[14] It may also be noted that in this case, these constitutional requirements were complied with by the police officers only *after* petitioner had been arrested for illegal possession of dangerous drugs.

In *Berkemer*, the U.S. Court also noted that the *Miranda* warnings must also be given to a person apprehended due to a traffic violation:

> The purposes of the safeguards prescribed by Miranda are to ensure that the police do not coerce or trick captive suspects into confessing, to relieve the "inherently compelling pressures" "generated by the custodial setting itself," "which work to undermine the individual's will to resist," and as much as possible to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary. Those purposes are implicated as much by in-custody questioning of persons suspected of misdemeanors as they are by questioning of persons suspected of felonies.

If it were true that petitioner was already deemed "arrested" when he was flagged down for a traffic violation and while he was waiting for his ticket, then there would have been no need

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[14] *Morales v. Enrile*, 206 Phil. 466 (1983).

for him to be arrested for a second time—after the police officers allegedly discovered the drugs—as he was already in their custody.

***Second*, there being no valid arrest, the warrantless search that resulted from it was likewise illegal.**

The following are the instances when a warrantless search is allowed: (i) a warrantless search incidental to a lawful arrest; (ii) search of evidence in "plain view;" (iii) search of a moving vehicle; (iv) consented warrantless search; (v) customs search; (vi) a "stop and frisk" search; and (vii) exigent and emergency circumstances.[15] None of the above-mentioned instances, especially a search incident to a lawful arrest, are applicable to this case.

It must be noted that the evidence seized, although alleged to be inadvertently discovered, was not in "plain view." It was actually concealed inside a metal container inside petitioner's pocket. Clearly, the evidence was not immediately apparent.[16]

Neither was there a consented warrantless search. Consent to a search is not to be lightly inferred, but shown by clear and convincing evidence.[17] It must be voluntary in order to validate an otherwise illegal search; that is, the consent must be unequivocal, specific, intelligently given and uncontaminated by any duress or coercion. While the prosecution claims that petitioner acceded to the instruction of PO3 Alteza, this alleged accession does not suffice to prove valid and intelligent consent. In fact, the RTC found that petitioner was merely "told" to take out the contents of his pocket.[18]

Whether consent to the search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances. Relevant to this determination are the following characteristics of the person giving consent and the environment

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[15] *People v. Bolasa*, 378 Phil. 1073, 1078-1079 (1999).

[16] See *People v. Macalaba*, 443 Phil. 565 (2003).

[17] *Caballes v. Court of Appeals*, 424 Phil. 263 (2002).

[18] RTC Decision, *rollo*, p. 91.

in which consent is given: (1) the age of the defendant; (2) whether the defendant was in a public or a secluded location; (3) whether the defendant objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence would be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting. It is the State that has the burden of proving, by clear and positive testimony, that the necessary consent was obtained, and was freely and voluntarily given.[19] In this case, all that was alleged was that petitioner was alone at the police station at three in the morning, accompanied by several police officers. These circumstances weigh heavily against a finding of valid consent to a warrantless search.

Neither does the search qualify under the "stop and frisk" rule. While the rule normally applies when a police officer observes suspicious or unusual conduct, which may lead him to believe that a criminal act may be afoot, the stop and frisk is merely a limited protective search of outer clothing for weapons.[20]

In *Knowles v. Iowa*,[21] the U.S. Supreme Court held that when a police officer stops a person for speeding and correspondingly issues a citation instead of arresting the latter, this procedure does not authorize the officer to conduct a full search of the car. The Court therein held that there was no justification for a full-blown search when the officer does not arrest the motorist. Instead, police officers may only conduct minimal intrusions, such as ordering the motorist to alight from the car or doing a patdown:

In Robinson, *supra,* we noted the two historical rationales for the "search incident to arrest" exception: (1) the need to disarm the

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[19] *Caballes v. Court of Appeals*, 424 Phil. 263 (2002).

[20] *People v. Sy Chua*, 444 Phil. 757 (2003).

[21] 525 U.S. 113 (1998).

suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial. x x x But neither of these underlying rationales for the search incident to arrest exception is sufficient to justify the search in the present case.

We have recognized that the first rationale—officer safety—is "'both legitimate and weighty,'" x x x The threat to officer safety from issuing a traffic citation, however, is a good deal less than in the case of a custodial arrest. In Robinson, we stated that a custodial arrest involves "danger to an officer" because of "the extended exposure which follows the taking of a suspect into custody and transporting him to the police station." 414 U. S., at 234-235. We recognized that "[t]he danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty, and not from the grounds for arrest." *Id*., at 234, n. 5. **A routine traffic stop, on the other hand, is a relatively brief encounter and "is more analogous to a so-called 'Terry stop' . . . than to a formal arrest."** *Berkemer v. McCarty*, 468 U. S. 420, 439 (1984). See also *Cupp v. Murphy*, 412 U. S. 291, 296 (1973) ("Where there is no formal arrest . . . a person might well be less hostile to the police and less likely to take conspicuous, immediate steps to destroy incriminating evidence").

This is not to say that the concern for officer safety is absent in the case of a routine traffic stop. It plainly is not. See Mimms, *supra*, at 110; Wilson, *supra*, at 413-414. **But while the concern for officer safety in this context may justify the "minimal" additional intrusion of ordering a driver and passengers out of the car, it does not by itself justify the often considerably greater intrusion attending a full fieldtype search.** Even without the search authority Iowa urges, officers have other, independent bases to search for weapons and protect themselves from danger. For example, they may order out of a vehicle both the driver, Mimms, *supra*, at 111, and any passengers, Wilson, *supra*, at 414; perform a "patdown" of a driver and any passengers upon reasonable suspicion that they may be armed and dangerous, *Terry v. Ohio*, 392 U. S. 1 (1968); conduct a "Terry patdown" of the passenger compartment of a vehicle upon reasonable suspicion that an occupant is dangerous and may gain immediate control of a weapon, *Michigan v. Long*, 463 U. S. 1032, 1049 (1983); and even conduct a full search of the passenger compartment, including any containers therein, pursuant to a custodial arrest, *New York v. Belton*, 453 U. S. 454, 460 (1981).

Nor has Iowa shown the second justification for the authority to search incident to arrest—the need to discover and preserve evidence. Once Knowles was stopped for speeding and issued a citation, all the evidence necessary to prosecute that offense had been obtained. No further evidence of excessive speed was going to be found either on the person of the offender or in the passenger compartment of the car. (Emphasis supplied.)

The foregoing considered, petitioner must be acquitted. While he may have failed to object to the illegality of his arrest at the earliest opportunity, a waiver of an illegal warrantless arrest does not, however, mean a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest.[22]

The Constitution guarantees the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.[23] Any evidence obtained in violation of said right shall be inadmissible for any purpose in any proceeding. While the power to search and seize may at times be necessary to the public welfare, still it must be exercised and the law implemented without contravening the constitutional rights of citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.[24]

The subject items seized during the illegal arrest are inadmissible.[25] The drugs are the very *corpus delicti* of the crime of illegal possession of dangerous drugs. Thus, their inadmissibility precludes conviction and calls for the acquittal of the accused.[26]

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[22] *People v. Lapitaje*, 445 Phil. 729 (2003).

[23] 1987 CONST., Art. III, Sec. 2.

[24] *Valdez v. People*, G.R. No. 170180, 23 November 2007, 538 SCRA 611.

[25] *People v. Martinez*, G.R. No. 191366, 13 December 2010.

[26] *Id.*

WHEREFORE, the Petition is **GRANTED**. The 18 February 2011 Decision of the Court of Appeals in CA-G.R. CR No. 32516 affirming the judgment of conviction dated 19 February 2009 of the Regional Trial Court, 5th Judicial Region, Naga City, Branch 21, in Criminal Case No. RTC 2003-0087, is hereby **REVERSED** and **SET ASIDE**. Petitioner Rodel Luz *y* Ong is hereby **ACQUITTED**. The bail bond posted for his provisional liberty is **CANCELLED** and **RELEASED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 152272. March 5, 2012]

JUANA COMPLEX I HOMEOWNERS ASSOCIATION, INC., ANDRES C. BAUTISTA, BRIGIDO DIMACULANGAN, DOLORES P. PRADO, IMELDA DE LA CRUZ, EDITHA C. DY, FLORENCIA M. MERCADO, LEOVINO C. DATARIO, AIDA A. ABAYON, NAPOLEON M. DIMAANO, ROSITA G. ESTIGOY and NELSON A. LOYOLA, *petitioners, vs.* **FIL-ESTATE LAND, INC., FIL ESTATE ECOCENTRUM CORPORATION, LA PAZ HOUSING AND DEVELOPMENT CORPORATION, WARBIRD SECURITY AGENCY, ENRIQUE RIVILLA, MICHAEL E. JETHMAL and MICHAEL ALUNAN,** *respondents.*

[G.R. No. 152397. March 5, 2012]

FIL-ESTATE LAND, INC., FIL ESTATE ECOCENTRUM CORPORATION, LA PAZ HOUSING AND DEVELOPMENT CORPORATION, WARBIRD SECURITY AGENCY, ENRIQUE RIVILLA, MICHAEL E. JETHMAL and MICHAEL ALUNAN, *petitioners, vs.* **JUANA COMPLEX I HOMEOWNERS ASSOCIATION, INC., ANDRES C. BAUTISTA, BRIGIDO DIMACULANGAN, DOLORES P. PRADO, IMELDA DE LA CRUZ, EDITHA C. DY, FLORENCIA M. MERCADO, LEOVINO C. DATARIO, AIDA A. ABAYON, NAPOLEON M. DIMAANO, ROSITA G. ESTIGOY and NELSON A. LOYOLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; CAUSE OF ACTION; WHEN SUFFICIENT.— Section 2, Rule 2 of the Rules of Court defines a cause of action as an act or omission by which a party violates the right of another. A complaint states a cause of action when it contains three (3) essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right. The question of whether the complaint states a cause of action is determined by its averments regarding the acts committed by the defendant. Thus, it must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action. To be taken into account are only the material allegations in the complaint; extraneous facts and circumstances or other matters *aliunde* are not considered. The test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint. Stated differently, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be asserted by the defendant.

2. ID.; ID.; ID.; ID.; THE COURT FINDS THE ALLEGATIONS IN THE COMPLAINT SUFFICIENT TO ESTABLISH A CAUSE OF ACTION.— In the present case, the Court finds the allegations in the complaint sufficient to establish a cause of action. *First,* JCHA, *et al.*'s averments in the complaint show a demandable right over La Paz Road. These are: (1) their right to use the road on the basis of their allegation that they had been using the road for more than 10 years; and (2) an easement of a right of way has been constituted over the said roads. There is no other road as wide as La Paz Road existing in the vicinity and it is the shortest, convenient and safe route towards SLEX Halang that the commuters and motorists may use. *Second,* there is an alleged violation of such right committed by Fil-Estate, *et al*. when they excavated the road and prevented the commuters and motorists from using the same. *Third,* JCHA, *et al.* consequently suffered injury and that a valid judgment could have been rendered in accordance with the relief sought therein.

3. ID.; ID.; ID.; PARTIES TO CIVIL ACTIONS; CLASS SUIT; PROPERLY INSTITUTED IN CASE AT BAR; THE SUIT IS CLEARLY ONE THAT BENEFITS ALL COMMUTERS AND MOTORISTS WHO USE THE LA PAZ ROAD.— The necessary elements for the maintenance of a class suit are: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned. In this case, the suit is clearly one that benefits all commuters and motorists who use La Paz Road.

4. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PETITIONERS FAILED TO ESTABLISH A *PRIMA FACIE* PROOF OF VIOLATION OF THEIR RIGHT TO JUSTIFY THE ISSUANCE THEREOF.— A writ of preliminary injunction is available to prevent a threatened or continuous irremediable injury to parties before their claims can be thoroughly studied and adjudicated. The requisites for its issuance are: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount

necessity for the writ to prevent serious damage. For the writ to issue, the right sought to be protected must be a present right, a legal right which must be shown to be clear and positive. This means that the persons applying for the writ must show that they have an ostensible right to the final relief prayed for in their complaint. In the case at bench, JCHA, *et al.* failed to establish a *prima facie* proof of violation of their right to justify the issuance of a WPI. Their right to the use of La Paz Road is disputable since they have no clear legal right therein.

5. ID.; ID.; ID.; AN INJUNCTIVE WRIT IS NOT A JUDGMENT ON THE MERIT BUT MERELY AN ORDER FOR THE GRANT OF A PROVISIONAL AND ANCILLARY REMEDY TO PRESERVE THE *STATUS QUO* UNTIL THE MERITS OF THE CASE CAN BE HEARD.— Consequently, the case should be further heard by the RTC so that the parties can fully prove their respective positions on the issues. Due process considerations dictate that the assailed injunctive writ is not a judgment on the merits but merely an order for the grant of a provisional and ancillary remedy to preserve the status quo until the merits of the case can be heard. The hearing on the application for issuance of a writ of preliminary injunction is separate and distinct from the trial on the merits of the main case. The evidence submitted during the hearing of the incident is not conclusive or complete for only a "sampling" is needed to give the trial court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. There are vital facts that have yet to be presented during the trial which may not be obtained or presented during the hearing on the application for the injunctive writ. Moreover, the quantum of evidence required for one is different from that for the other.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for Fil Estate Land Inc., *et al.*
Dominador I. Ferrer for La Paz Housing & Dev't. Corp.
Garcia Ines Villacarlos & Garcia Law Offices for JCHAI, *et al.*

D E C I S I O N

MENDOZA, *J.*:

Before the Court are two (2) consolidated petitions assailing the July 31, 2001 Decision[1] and February 21, 2002 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 60543, which annulled and set aside the March 3, 1999 Order[3] of the Regional Trial Court, Branch 25, Biñan, Laguna *(RTC)*, granting the application for the issuance of a writ of preliminary injunction, and upheld the June 16, 2000 Omnibus Order[4] denying the motion to dismiss.

The Facts:

On January 20, 1999, Juana Complex I Homeowners Association, Inc. *(JCHA)*, together with individual residents of Juana Complex I and other neighboring subdivisions *(collectively referred as JCHA, et. al.)*, instituted a complaint[5] for damages, in its own behalf and as a class suit representing the regular commuters and motorists of Juana Complex I and neighboring subdivisions who were deprived of the use of La Paz Road, against Fil-Estate Land, Inc. *(Fil-Estate)*, Fil-estate Ecocentrum Corporation *(FEEC)*, La Paz Housing & Development Corporation *(La Paz)*, and Warbird Security Agency and their respective officers *(collectively referred as Fil-Estate, et al.)*.

The complaint alleged that JCHA, *et al.* were regular commuters and motorists who constantly travelled towards the direction of Manila and Calamba; that they used the entry and exit toll gates

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[1] *Rollo* (G.R. No. 152272), pp. 164-178. Penned by then Associate Justice Ruben T. Reyes (now a retired member of this Court) with Associate Justice Mercedes Gozo-Dadole and Associate Justice Juan Q. Enriquez, Jr., concurring.

[2] *Id.* at 218-219.

[3] *Id.* at 144-148; *rollo* (G.R. No. 152397), pp. 139-143.

[4] *Rollo* (G.R. No. 152272), pp. 117-143.

[5] *Id.* at 64-74.

of South Luzon Expressway *(SLEX)* by passing through right-of-way public road known as La Paz Road; that they had been using La Paz Road for more than ten (10) years; that in August 1998, Fil-estate excavated, broke and deliberately ruined La Paz Road that led to SLEX so JCHA, *et al.* would not be able to pass through the said road; that La Paz Road was restored by the residents to make it passable but Fil-estate excavated the road again; that JCHA reported the matter to the Municipal Government and the Office of the Municipal Engineer but the latter failed to repair the road to make it passable and safe to motorists and pedestrians; that the act of Fil-estate in excavating La Paz Road caused damage, prejudice, inconvenience, annoyance, and loss of precious hours to them, to the commuters and motorists because traffic was re-routed to narrow streets that caused terrible traffic congestion and hazard; and that its permanent closure would not only prejudice their right to free and unhampered use of the property but would also cause great damage and irreparable injury.

Accordingly, JCHA, *et al.* also prayed for the immediate issuance of a Temporary Restraining Order *(TRO)* or a writ of preliminary injunction *(WPI)* to enjoin Fil-Estate, *et al.* from stopping and intimidating them in their use of La Paz Road.

On February 10, 1999, a TRO was issued ordering Fil-Estate, *et al,* for a period of twenty (20) days, to stop preventing, coercing, intimidating or harassing the commuters and motorists from using the La Paz Road.[6]

Subsequently, the RTC conducted several hearings to determine the propriety of the issuance of a WPI.

On February 26, 1999, Fil-Estate, *et al.* filed a motion to dismiss[7] arguing that the complaint failed to state a cause of action and that it was improperly filed as a class suit. On

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[6] *Rollo* (G.R. No. 152397), pp. 272-275.

[7] *Id.* at 591-606.

March 5, 1999, JCHA, *et al.* filed their comment[8] on the motion to dismiss to which respondents filed a reply.[9]

On March 3, 1999, the RTC issued an Order[10] granting the WPI and required JCHA, *et al.* to post a bond.

On March 19, 1999, Fil-Estate, *et al.* filed a motion for reconsideration[11] arguing, among others, that JCHA, *et al.* failed to satisfy the requirements for the issuance of a WPI. On March 23, 1999, JCHA, *et al.* filed their opposition to the motion.[12]

The RTC then issued its June 16, 2000 Omnibus Order, denying both the motion to dismiss and the motion for reconsideration filed by Fil-Estate, *et al.*

Not satisfied, Fil-Estate, *et al.* filed a petition for *certiorari* and prohibition before the CA to annul (1) the Order dated March 3, 1999 and (2) the Omnibus Order dated June 16, 2000. They contended that the complaint failed to state a cause of action and that it was improperly filed as a class suit. With regard to the issuance of the WPI, the defendants averred that JCHA, *et al.* failed to show that they had a clear and unmistakable right to the use of La Paz Road; and further claimed that La Paz Road was a torrens registered private road and there was neither a voluntary nor legal easement constituted over it.[13]

On July 31, 2001, the CA rendered the decision partially granting the petition, the dispositive portion of which reads:

WHEREFORE, the petition is hereby partially GRANTED. The Order dated March 3, 1999 granting the writ of preliminary injunction

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[8] *Id.* at 612-622.

[9] *Id.* at 623-638.

[10] *Rollo* (G.R. No. 152272), pp. 144-148; *rollo* (G.R. No. 152397), pp. 139-143.

[11] *Rollo* (G.R. No. 152272), pp. 95-116.

[12] *Id.* at 117-143.

[13] CA *rollo*, pp. 2-57.

is hereby ANNULLED and SET ASIDE but the portion of the Omnibus Order dated June 16, 2000 denying the motion to dismiss is upheld.

SO ORDERED.[14]

The CA ruled that the complaint sufficiently stated a cause of action when JCHA, *et al.* alleged in their complaint that they had been using La Paz Road for more than ten (10) years and that their right was violated when Fil-Estate closed and excavated the road. It sustained the RTC ruling that the complaint was properly filed as a class suit as it was shown that the case was of common interest and that the individuals sought to be represented were so numerous that it was impractical to include all of them as parties. The CA, however, annulled the WPI for failure of JCHA, *et al.* to prove their clear and present right over La Paz Road. The CA ordered the remand of the case to the RTC for a full-blown trial on the merits.

Hence, these petitions for review.

In G.R. No. 152272, JCHA, *et al.* come to this Court, raising the following issues:

(A)

THE HONORABLE COURT OF APPEALS, IN HOLDING THAT A FULL-BLOWN TRIAL ON THE MERITS IS REQUIRED TO DETERMINE THE NATURE OF THE LA PAZ ROAD, HAD DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION.

(B)

THE HONORABLE COURT OF APPEALS, IN HOLDING THAT THE PETITIONERS FAILED TO SATISFY THE REQUIREMENTS FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION, HAD DECIDED NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.[15]

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[14] *Rollo* (G.R. No. 152272), p. 178.

[15] *Id.* at 362.

In G.R. No. 152397, on the other hand, Fil-Estate, *et al.* anchor their petition on the following issues:

I.

The Court of Appeals' declaration that respondents' Complaint states a cause of action is contrary to existing law and jurisprudence.

II.

The Court of Appeals' pronouncement that respondents' complaint was properly filed as a class suit is contrary to existing law and jurisprudence.

III.

The Court of Appeals' conclusion that full blown trial on the merits is required to determine the nature of the La Paz Road is contrary to existing laws and jurisprudence.[16]

JCHA, *et al.* concur with the CA that the complaint sufficiently stated a cause of action. They, however, disagree with the CA's pronouncement that a full-blown trial on the merits was necessary. They claim that during the hearing on the application of the writ of injunction, they had sufficiently proven that La Paz Road was a public road and that commuters and motorists of their neighboring villages had used this road as their means of access to the San Agustin Church, Colegio De San Agustin and to SLEX in going to Metro Manila and to Southern Tagalog particularly during the rush hours when traffic at Carmona Entry/ Exit and Susana Heights Entry/Exit was at its worst.

JCHA, *et al.* argue that La Paz Road has attained the status and character of a public road or burdened by an apparent easement of public right of way. They point out that La Paz Road is the widest road in the neighborhood used by motorists in going to Halang Road and in entering the SLEX-Halang toll gate and that there is no other road as wide as La Paz Road existing in the vicinity. For residents of San Pedro, Laguna, the

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[16] *Rollo* (G.R. No. 152397), p. 17.

shortest, convenient and safe route towards SLEX Halang is along Rosario Avenue joining La Paz Road.

Finally, JCHA, *et al.* argue that the CA erred when it voided the WPI because the public nature of La Paz Road had been sufficiently proven and, as residents of San Pedro and Biñan, Laguna, their right to use La Paz Road is undeniable.

In their Memorandum,[17] Fil-Estate, *et al.* explain that La Paz Road is included in the parcels of land covered by Transfer Certificates of Title *(TCT)* Nos. T-120008, T-90321 and T-90607, all registered in the name of La Paz. The purpose of constructing La Paz Road was to provide a passageway for La Paz to its intended projects to the south, one of which was the Juana Complex I. When Juana Complex I was completed, La Paz donated the open spaces, drainage, canal, and lighting facilities inside the Juana Complex I to the Municipality of Biñan. The streets within the subdivisions were then converted to public roads and were opened for use of the general public. The La Paz Road, not being part of the Juana Complex I, was excluded from the donation. Subsequently, La Paz became a shareholder of FEEC, a consortium formed to develop several real properties in Biñan, Laguna, known as Ecocentrum Project. In exchange for shares of stock, La Paz contributed some of its real properties to the Municipality of Biñan, including the properties constituting La Paz Road, to form part of the Ecocentrum Project.

Fil-Estate, *et al.* agree with the CA that the annulment of the WPI was proper since JCHA, *et al.* failed to prove that they have a clear right over La Paz Road. Fil-Estate, *et al.* assert that JCHA, *et al.* failed to prove the existence of a right of way or a right to pass over La Paz Road and that the closure of the said road constituted an injury to such right. According to them, La Paz Road is a torrens registered private road and there is neither a voluntary nor legal easement constituted over it. They claim that La Paz Road is a private property registered under the name of La Paz and the beneficial ownership thereof

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[17] *Rollo* (G.R. No. 152272), pp. 314-351.

was transferred to FEEC when La Paz joined the consortium for the Ecocentrum Project.

Fil-Estate, *et al.*, however, insist that the complaint did not sufficiently contain the ultimate facts to show a cause of action. They aver the bare allegation that one is entitled to something is an allegation of a conclusion which adds nothing to the pleading.

They likewise argue that the complaint was improperly filed as a class suit for it failed to show that JCHA, *et al.* and the commuters and motorists they are representing have a well-defined community of interest over La Paz Road. They claim that the excavation of La Paz Road would not necessarily give rise to a common right or cause of action for JCHA, *et al.* against them since each of them has a separate and distinct purpose and each may be affected differently than the others.

The Court's Ruling

The issues for the Court's resolution are: (1) whether or not the complaint states a cause of action; (2) whether the complaint has been properly filed as a class suit; and (2) whether or not a WPI is warranted.

Section 2, Rule 2 of the Rules of Court defines a cause of action as an act or omission by which a party violates the right of another. A complaint states a cause of action when it contains three (3) essential elements of a cause of action, namely:

(1) the legal right of the plaintiff,

(2) the correlative obligation of the defendant, and

(3) the act or omission of the defendant in violation of said legal right.[18]

The question of whether the complaint states a cause of action is determined by its averments regarding the acts committed by the defendant.[19] Thus, it must contain a concise statement of

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[18] *Makati Stock Exchange, Inc. v. Campos*, G.R. No. 138814, April 16, 2009, 585 SCRA 120, 126.

[19] *Goodyear Philippines, Inc. v. Sy*, 511 Phil. 41, 49 (2005).

the ultimate or essential facts constituting the plaintiff's cause of action.[20] To be taken into account are only the material allegations in the complaint; extraneous facts and circumstances or other matters *aliunde* are not considered.[21]

The test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint.[22] Stated differently, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be asserted by the defendant.[23]

In the present case, the Court finds the allegations in the complaint sufficient to establish a cause of action. *First*, JCHA, *et al.*'s averments in the complaint show a demandable right over La Paz Road. These are: (1) their right to use the road on the basis of their allegation that they had been using the road for more than 10 years; and (2) an easement of a right of way has been constituted over the said roads. There is no other road as wide as La Paz Road existing in the vicinity and it is the shortest, convenient and safe route towards SLEX Halang that the commuters and motorists may use. *Second*, there is an alleged violation of such right committed by Fil-Estate, *et al.* when they excavated the road and prevented the commuters and motorists from using the same. *Third*, JCHA, *et al.* consequently suffered injury and that a valid judgment could have been rendered in accordance with the relief sought therein.

With respect to the issue that the case was improperly instituted as a class suit, the Court finds the opposition without merit.

Section 12, Rule 3 of the Rules of Court defines a class suit, as follows:

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[20] *Jimenez, Jr. v. Jordana,* 486 Phil. 452, 465 (2004).

[21] *Supra* note 19 at 50.

[22] *Misamis Occidental II Cooperative, Inc. v. David,* 505 Phil. 181, 189, (2005).

[23] *Makati Stock Exchange, Inc. v. Campos, supra* note 18 at 126-127.

Sec. 12. *Class suit.* – When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.

The necessary elements for the maintenance of a class suit are: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned.[24]

In this case, the suit is clearly one that benefits all commuters and motorists who use La Paz Road. As succinctly stated by the CA:

The subject matter of the instant case, *i.e.*, the closure and excavation of the La Paz Road, is initially shown to be of common or general interest to many persons. The records reveal that numerous individuals have filed manifestations with the lower court, conveying their intention to join private respondents in the suit and claiming that they are similarly situated with private respondents for they were also prejudiced by the acts of petitioners in closing and excavating the La Paz Road. Moreover, the individuals sought to be represented by private respondents in the suit are so numerous that it is impracticable to join them all as parties and be named individually as plaintiffs in the complaint. These individuals claim to be residents of various *barangays* in Biñan, Laguna and other *barangays* in San Pedro, Laguna.

Anent the issue on the propriety of the WPI, Section 3, Rule 58 of the Rules of Court lays down the rules for the issuance thereof. Thus:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission

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[24] Oscar M. Herrera, *I Remedial Law*, 2000 ed., 390.

or continuance of the acts complained of, or in 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, or agency or a person is doing, threatening, or 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.

A writ of preliminary injunction is available to prevent a threatened or continuous irremediable injury to parties before their claims can be thoroughly studied and adjudicated.[25] The requisites for its issuance are: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.[26] For the writ to issue, the right sought to be protected must be a present right, a legal right which must be shown to be clear and positive.[27] This means that the persons applying for the writ must show that they have an ostensible right to the final relief prayed for in their complaint.[28]

In the case at bench, JCHA, *et al.* failed to establish a *prima facie* proof of violation of their right to justify the issuance of a WPI. Their right to the use of La Paz Road is disputable since they have no clear legal right therein. As correctly ruled by the CA:

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[25] *City of Naga v. Asuncion,* G.R. No. 174042, July 9, 2008, 557 SCRA 528, 544.

[26] *Talento v. Escalada, Jr.,* G.R. No. 180884, June 27, 2008, 556 SCRA 491, 500.

[27] *Del Rosario v. Court of Appeals,* 325 Phil. 424, 432, (1996).

[28] *Filipino Metals Corporation v. Secretary of Department of Trade and Industry,* 502 Phil. 191, 201 (2005).

Here, contrary to the ruling of respondent Judge, private respondents failed to prove as yet that they have a clear and unmistakable right over the La Paz Road – which was sought to be protected by the injunctive writ. They merely anchor their purported right over the La Paz Road on the bare allegation that they have been using the same as public road right-of-way for more than ten years. A mere allegation does not meet the standard of proof that would warrant the issuance of the injunctive writ. Failure to establish the existence of a clear right which should be judicially protected through the writ of injunction is a sufficient ground for denying the injunction.

Consequently, the case should be further heard by the RTC so that the parties can fully prove their respective positions on the issues.

Due process considerations dictate that the assailed injunctive writ is not a judgment on the merits but merely an order for the grant of a provisional and ancillary remedy to preserve the status quo until the merits of the case can be heard. The hearing on the application for issuance of a writ of preliminary injunction is separate and distinct from the trial on the merits of the main case. [29] The evidence submitted during the hearing of the incident is not conclusive or complete for only a "sampling" is needed to give the trial court an idea of the justification for the preliminary injunction pending the decision of the case on the merits.[30] There are vital facts that have yet to be presented during the trial which may not be obtained or presented during the hearing on the application for the injunctive writ.[31] Moreover, the quantum of evidence required for one is different from that for the other.[32]

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[29] *Commissioner of Internal Revenue v. Court of Appeals,* 327 Phil. 1, 48, (1996).

[30] *Landbank of the Philippines v. Continental Watchman Agency Incorporated,* 465 Phil. 607, 617, (2004).

[31] *Urbanes, Jr. v. Court of Appeals,* 407 Phil. 856, 867, (2001).

[32] *Supra* note 29.

WHEREFORE, the petitions are **DENIED**. Accordingly, the July 31, 2001 Decision and February 21, 2002 Resolution of the Court of Appeals in CA-G.R. SP No. 60543 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 171251. March 5, 2012]

LASCONA LAND CO., INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); REMEDIES; PROTESTING OF ASSESSMENT; REMEDIES OF TAXPAYER WHEN THE COMMISSIONER FAILED TO ACT ON DISPUTED ASSESSMENT WITHIN THE 180-DAY PERIOD FROM THE DATE OF SUBMISSION OF DOCUMENTS.— In *RCBC v. CIR*, the Court has held that in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. This is consistent with Section 3 A (2), Rule 4 of the Revised Rules of the Court of Tax Appeals.

2. ID.; ID.; ID.; ID.; WHEN SECTION 228 OF THE NIRC PROVIDED FOR THE REMEDY TO APPEAL THE INACTION OF THE COMMISSIONER OF INTERNAL REVENUE, IT DID NOT INTEND TO LIMIT IT TO A SINGLE REMEDY OF FILING AN APPEAL AFTER THE LAPSE OF THE 180-DAY PRESCRIBED PERIOD; A TAXPAYER CANNOT BE PREJUDICED IF HE CHOOSES TO WAIT FOR THE FINAL DECISION OF THE COMMISSIONER OF INTERNAL REVENUE ON THE PROTESTED ASSESSMENT.— In arguing that the assessment became final and executory by the sole reason that petitioner failed to appeal the inaction of the Commissioner within 30 days after the 180-day reglementary period, respondent, in effect, limited the remedy of Lascona, as a taxpayer, under Section 228 of the NIRC to just one, that is – to appeal the inaction of the Commissioner on its protested assessment after the lapse of the 180-day period. This is incorrect. As early as the case of *CIR v. Villa*, it was already established that the word "decisions" in paragraph 1, Section 7 of Republic Act No. 1125, quoted above, has been interpreted to mean the *decisions* of the Commissioner of Internal Revenue on the *protest* of the taxpayer against the assessments. Definitely, said word does not signify the assessment itself. x x x Therefore, as in Section 228, when the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More so, because the law and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment.

3. ID.; ID.; ID.; ID.; THE OPTIONS AVAILABLE TO THE TAXPAYER ARE MUTUALLY EXCLUSIVE AND RESORT TO ONE BARS THE APPLICATION OF THE OTHER; PETITIONER'S APPEAL TO THE COURT OF TAX APPEALS (CTA) ON THE DISPUTED ASSESSMENT WAS PROPER AND TIMELY FILED.— It must be emphasized, however, that in case of the inaction of the CIR on the protested assessment, while we reiterate – the taxpayer has two options, either: (1) file a petition for review with the CTA within 30

days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, **these options are mutually exclusive and resort to one bars the application of the other**. Accordingly, considering that Lascona opted to await the final decision of the Commissioner on the protested assessment, it then has the right to appeal such final decision to the Court by filing a petition for review within thirty days after receipt of a copy of such decision or ruling, even after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. Thus, Lascona, when it filed an appeal on April 12, 1999 before the CTA, after its receipt of the Letter dated March 3, 1999 on March 12, 1999, the appeal was timely made as it was filed within 30 days after receipt of the copy of the decision.

4. ID.; ID.; ID.; ID.; THE COMMISSIONER OF INTERNAL REVENUE SHOULD BE REMINDED THAT TAXPAYERS CANNOT BE LEFT IN QUANDARY BY ITS INACTION ON PROTESTED ASSESSMENTS.— The CIR should be reminded that taxpayers cannot be left in quandary by its inaction on the protested assessment. It is imperative that the taxpayers are informed of its action in order that the taxpayer should then at least be able to take recourse to the tax court at the opportune time. As correctly pointed out by the tax court: x x x to adopt the interpretation of the respondent will not only sanction inefficiency, but will likewise condone the Bureau's inaction. This is especially true in the instant case when despite the fact that respondent found petitioner's arguments to be in order, the assessment will become final, executory and demandable for petitioner's failure to appeal before us within the thirty (30) day period.

5. ID.; ID.; ID.; ID.; COLLECTION OF TAXES SHOULD BE MADE IN ACCORDANCE WITH LAW AS ANY ARBITRARINESS WILL NEGATE THE VERY REASON FOR GOVERNMENT ITSELF.— Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to

reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved. Thus, even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
The Solicitor General 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 the reversal of the Decision[1] dated October 25, 2005 and Resolution[2] dated January 20, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 58061 which set aside the Decision[3] dated January 4, 2000 and Resolution[4] dated March 3, 2000 of the Court of Tax Appeals (CTA) in C.T.A. Case No. 5777 and declared Assessment Notice No. 0000047-93-407 dated March 27, 1998 to be final, executory and demandable.

The facts, as culled from the records, are as follows:

On March 27, 1998, the Commissioner of Internal Revenue (CIR) issued Assessment Notice No. 0000047-93-407[5] against

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[1] Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Remedios Salazar-Fernando and Hakim S. Abdulwahid, concurring, *rollo*, pp. 13-20.

[2] *Id.* at 21.

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

[4] *Id.* at 119-120.

[5] *Id.* at 102.

Lascona Land Co., Inc. (Lascona) informing the latter of its alleged deficiency income tax for the year 1993 in the amount of ₱753,266.56.

Consequently, on April 20, 1998, Lascona filed a letter protest, but was denied by Norberto R. Odulio, Officer-in-Charge (OIC), Regional Director, Bureau of Internal Revenue, Revenue Region No. 8, Makati City, in his Letter[6] dated March 3, 1999, which reads, thus:

x x x x x x x x x

Subject: LASCONA LAND CO., INC.
1993 Deficiency Income Tax

Madam,

Anent the 1993 tax case of subject taxpayer, please be informed that while we agree with the arguments advanced in your letter protest, we regret, however, that ***we cannot give due course to your request to cancel or set aside the assessment notice issued to your client for the reason that the case was not elevated to the Court of Tax Appeals as mandated by the provisions of the last paragraph of Section 228 of the Tax Code.*** By virtue thereof, the said assessment notice has become final, executory and demandable.

In view of the foregoing, please advise your client to pay its 1993 deficiency income tax liability in the amount of ₱753,266.56.

x x x x x x x x x (Emphasis ours)

On April 12, 1999, Lascona appealed the decision before the CTA and was docketed as C.T.A. Case No. 5777. Lascona alleged that the Regional Director erred in ruling that the failure to appeal to the CTA within thirty (30) days from the lapse of the 180-day period rendered the assessment final and executory.

The CIR, however, maintained that Lascona's failure to timely file an appeal with the CTA after the lapse of the 180-day reglementary period provided under Section 228 of the National Internal Revenue Code (NIRC) resulted to the finality of the assessment.

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[6] *Id.* at 103.

On January 4, 2000, the CTA, in its Decision,[7] nullified the subject assessment. It held that in cases of inaction by the CIR on the protested assessment, Section 228 of the NIRC provided two options for the taxpayer: (1) appeal to the CTA within thirty (30) days from the lapse of the one hundred eighty (180)-day period, or (2) wait until the Commissioner decides on his protest before he elevates the case.

The CIR moved for reconsideration. It argued that in declaring the subject assessment as final, executory and demandable, it did so pursuant to Section 3 (3.1.5) of Revenue Regulations No. 12-99 dated September 6, 1999 which reads, thus:

> If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period; otherwise, the assessment shall become final, executory and demandable.

On March 3, 2000, the CTA denied the CIR's motion for reconsideration for lack of merit.[8] The CTA held that Revenue Regulations No. 12-99 must conform to Section 228 of the NIRC. It pointed out that the former spoke of an assessment becoming final, executory and demandable by reason of the inaction by the Commissioner, while the latter referred to decisions becoming final, executory and demandable should the taxpayer adversely affected by the decision fail to appeal before the CTA within the prescribed period. Finally, it emphasized that in cases of discrepancy, Section 228 of the NIRC must prevail over the revenue regulations.

Dissatisfied, the CIR filed an appeal before the CA.[9]

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[7] *Id.* at 111-118.

[8] *Id.* at 119-120.

[9] *Id.* at 121-134.

In the disputed Decision dated October 25, 2005, the Court of Appeals granted the CIR's petition and set aside the Decision dated January 4, 2000 of the CTA and its Resolution dated March 3, 2000. It further declared that the subject Assessment Notice No. 0000047-93-407 dated March 27, 1998 as final, executory and demandable.

Lascona moved for reconsideration, but was denied for lack of merit.

Thus, the instant petition, raising the following issues:

I

THE HONORABLE COURT HAS, IN THE REVISED RULES OF COURT OF TAX APPEALS WHICH IT RECENTLY PROMULGATED, RULED THAT AN APPEAL FROM THE INACTION OF RESPONDENT COMMISSIONER IS NOT MANDATORY.

II

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT HELD THAT THE ASSESSMENT HAS BECOME FINAL AND DEMANDABLE BECAUSE, ALLEGEDLY, THE WORD "DECISION" IN THE LAST PARAGRAPH OF SECTION 228 CANNOT BE STRICTLY CONSTRUED AS REFERRING ONLY TO THE DECISION *PER SE* OF THE COMMISSIONER, BUT SHOULD ALSO BE CONSIDERED SYNONYMOUS WITH AN ASSESSMENT WHICH HAS BEEN PROTESTED, BUT THE PROTEST ON WHICH HAS NOT BEEN ACTED UPON BY THE COMMISSIONER.[10]

In a nutshell, the core issue to be resolved is: Whether the subject assessment has become final, executory and demandable due to the failure of petitioner to file an appeal before the CTA within thirty (30) days from the lapse of the One Hundred Eighty (180)-day period pursuant to Section 228 of the NIRC.

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[10] *Id.* at 30.

Petitioner Lascona, invoking Section 3,[11] Rule 4 of the Revised Rules of the Court of Tax Appeals, maintains that in case of inaction by the CIR on the protested assessment, it has the option to either: (1) appeal to the CTA within 30 days from the lapse of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment even beyond the 180-day period – in which case, the taxpayer may appeal such final decision within 30 days from the receipt of the said decision. Corollarily, petitioner posits that when the Commissioner failed to act on its protest within the 180-day period, it had the option to await for the final decision of the Commissioner on the protest, which it did.

The petition is meritorious.

Section 228 of the NIRC is instructional as to the remedies of a taxpayer in case of the inaction of the Commissioner on the protested assessment, to wit:

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[11] SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

x x x x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3 (a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code; (December 15, 2005)

SEC. 228. *Protesting of Assessment*. – x x x

x x x x x x x x x

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise the decision shall become final, executory and demandable. (Emphasis supplied).

Respondent, however, insists that in case of the inaction by the Commissioner on the protested assessment within the 180-day reglementary period, petitioner should have appealed the inaction to the CTA. Respondent maintains that due to Lascona's failure to file an appeal with the CTA after the lapse of the 180-day period, the assessment became final and executory.

We do not agree.

In *RCBC v. CIR*,[12] the Court has held that in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-

[12] G.R. No. 168498, April 24, 2007, 522 SCRA 144.

day period; or (2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.[13]

This is consistent with Section 3 A (2), Rule 4 of the Revised Rules of the Court of Tax Appeals,[14] to wit:

SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to review by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: **Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under** Section 3(a), Rule 8 of

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[13] *Id.* at 153.

[14] A.M. No. 05-11-07-CTA, November 22, 2005.

these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;
(Emphasis ours)

In arguing that the assessment became final and executory by the sole reason that petitioner failed to appeal the inaction of the Commissioner within 30 days after the 180-day reglementary period, respondent, in effect, limited the remedy of Lascona, as a taxpayer, under Section 228 of the NIRC to just one, that is – to appeal the inaction of the Commissioner on its protested assessment after the lapse of the 180-day period. This is incorrect.

As early as the case of *CIR v. Villa*,[15] it was already established that the word "decisions" in paragraph 1, Section 7 of Republic Act No. 1125, quoted above, has been interpreted to mean the *decisions* of the Commissioner of Internal Revenue on the *protest* of the taxpayer against the assessments. Definitely, said word does not signify the assessment itself. We quote what this Court said aptly in a previous case:

In the first place, *we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it*, and that consequently, the period of thirty days prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. **Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment,** . . .[16]

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[15] 130 Phil. 3 (1968).

[16] *Id.* at 6. (Emphasis supplied.)

Therefore, as in Section 228, when the law provided for the remedy to appeal the inaction of the CIR, it did not intend to limit it to a single remedy of filing of an appeal after the lapse of the 180-day prescribed period. Precisely, when a taxpayer protested an assessment, he naturally expects the CIR to decide either positively or negatively. A taxpayer cannot be prejudiced if he chooses to wait for the final decision of the CIR on the protested assessment. More so, because the law and jurisprudence have always contemplated a scenario where the CIR will decide on the protested assessment.

It must be emphasized, however, that in case of the inaction of the CIR on the protested assessment, while we reiterate – the taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, **these options are mutually exclusive and resort to one bars the application of the other**.

Accordingly, considering that Lascona opted to await the final decision of the Commissioner on the protested assessment, it then has the right to appeal such final decision to the Court by filing a petition for review within thirty days after receipt of a copy of such decision or ruling, even after the expiration of the 180-day period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments.[17] Thus, Lascona, when it filed an appeal on April 12, 1999 before the CTA, after its receipt of the Letter[18] dated March 3, 1999 on March 12, 1999, the appeal was timely made as it was filed within 30 days after receipt of the copy of the decision.

Finally, the CIR should be reminded that taxpayers cannot be left in quandary by its inaction on the protested assessment. It is imperative that the taxpayers are informed of its action in order that the taxpayer should then at least be able to take

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[17] Rule 8, Sec. 3 (a).

[18] *Rollo*, p. 103.

recourse to the tax court at the opportune time. As correctly pointed out by the tax court:

> x x x to adopt the interpretation of the respondent will not only sanction inefficiency, but will likewise condone the Bureau's inaction. This is especially true in the instant case when despite the fact that respondent found petitioner's arguments to be in order, the assessment will become final, executory and demandable for petitioner's failure to appeal before us within the thirty (30) day period.[19]

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.[20] Thus, even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure.[21]

WHEREFORE, the petition is **GRANTED**. The Decision dated October 25, 2005 and the Resolution dated January 20, 2006 of the Court of Appeals in CA-G.R. SP No. 58061 are **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated January 4, 2000 of the Court of Tax Appeals in C.T.A. Case No. 5777 and its Resolution dated March 3, 2000 are **REINSTATED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Villarama, Jr.,[*] and *Mendoza, JJ.,* concur.

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[19] *Id.* at 117.

[20] *Commissioner v. Algue, Inc.,* 241 Phil. 829, 830 (1988).

[21] *Id.* at 836.

[*] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Raffle dated February 29, 2012.

EN BANC

[A.M. No. 12-2-6-SC. March 6, 2012]

RE: PETITION FOR JUDICIAL CLEMENCY OF JUDGE IRMA ZITA V. MASAMAYOR

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; JUDICIAL CLEMENCY; APPLYING THE GUIDELINES IN RESOLVING REQUESTS FOR JUDICIAL CLEMENCY, THE COURT FINDS MERIT IN PETITIONER JUDGE'S REQUEST.— Considering petitioner's previous record, she is indeed disqualified from being further nominated for appointment to any judicial post, unless she be accorded judicial clemency. Notwithstanding, however, she was previously nominated by the JBC for lateral transfer to the RTC of Tagbilaran City in 2005. In A.M. No. 07-7-17-SC (*Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Clemency*), the Court laid down the following guidelines in resolving requests for judicial clemency. x x x Applying the said standards to this case, the Court finds merit in petitioner's request. A review of the records reveals that petitioner has exhibited remorse for her past misdeeds, which occurred more than ten (10) years ago. While she was found to have belatedly filed her motions for additional time to resolve the aforecited cases, the Court noted that she had disposed of the same within the extended period sought, except in A.M. No. 99-2-79-RTC where she submitted her compliance beyond the approved 45-day extended period. Nevertheless, petitioner has subsequently shown diligence in the performance of her duties and has not committed any similar act or omission. In the Memorandum of the Office of the Court Administrator, her prompt compliance with the judicial audit requirements of pending cases was acknowledged and she was even commended for her good performance in the effective management of her court and in the handling of court records.

2. ID.; ID.; ID.; ID.; PETITIONER'S DEDICATED SERVICE OF 23 YEARS TO THE JUDICIARY MERITS COMPASSION FROM THE COURT.— The Integrated Bar of the Philippines (IBP) Bohol Chapter has shown its high regard for petitioner per the letter of support signed by a number of its members addressed to the IBP dated October 15, 1999 during the pendency of her administrative cases and the IBP Resolution No. 11, Series of 2009 endorsing her application for lateral transfer to the RTC of Tagbilaran City. Petitioner's dedicated service of 23 years to the judiciary, having been first appointed as Municipal Circuit Trial Court judge in 1989, merits compassion from the Court. It bears to note that petitioner does not seek for promotion to a higher position but only a lateral transfer to a place of work near her residence.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For resolution is the petition for judicial clemency filed by Judge Irma Zita V. Masamayor, Executive and Presiding Judge of the Regional Trial Court, Branch 52, Talibon, Bohol in connection with her application for lateral transfer to the Regional Trial Courts (RTCs) of Tagbilaran City.

Petitioner claims that on January 24, 2012, she received a letter from the Judicial and Bar Council (JBC) informing her that she was not included in the list of nominees for RTC, Branch 2 or 4, Tagbilaran City.[1] She attributes her disqualification to her previous administrative record of gross inefficiency in 1999 and 2000 for belatedly filing her motions for extension of time to resolve the following cases then pending before her *sala*, to wit: Criminal Case No. 96-185 entitled "*People v. Jaime Cutanda alias 'Jimmy'*"; Civil Case No. 0020 entitled "*Alejandro Tutor, et al. v. Benedicto Orevillo, et al.*"; Criminal Case No. 98-384 entitled "*People v. Celso Evardo*"; and Criminal Case No. 96-251 entitled "*Gil Sajuña y Cagasin.*" Thus, she was ordered to

[1] *Rollo*, pp. 1 and 4.

pay a fine of ₱5,000.00 in A.M. No. 99-1-16-RTC[2]; ₱10,000.00 in A.M. No. 98-12-381-RTC[3]; and ₱12,000.00 in A.M. No. 99-2-79-RTC.[4] She was likewise earlier fined ₱5,000.00 for a similar violation of Canon 3, Rule 3.05 of the Code of Judicial Conduct in A.M. No. 98-10-338-RTC.[5]

Section 5, Rule 4 of the Rules of the JBC provides:

"SEC. 5. Disqualification. – The following are disqualified from being nominated for appointment to any judicial post or as Ombudsman or Deputy Ombudsman:

1. Those with pending criminal or regular administrative cases;

2. Those with pending criminal cases in foreign courts or tribunals; and

3. Those who have been convicted in any criminal case; or in an administrative case, where the penalty imposed is at least a fine of more than ₱10,000, unless he has been granted judicial clemency."

Considering petitioner's previous record, she is indeed disqualified from being further nominated for appointment to any judicial post, unless she be accorded judicial clemency. Notwithstanding, however, she was previously nominated by the JBC for lateral transfer to the RTC of Tagbilaran City in 2005.[6]

In A.M. No. 07-7-17-SC (*Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Clemency*),[7] the Court laid down the following guidelines in resolving requests for judicial clemency, thus:

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[2] *Id.*, pp. 15-21, promulgated on June 21, 1999.

[3] *Id.*, at pp. 23-32, promulgated on October 5, 1999.

[4] *Id.*, pp. 33-42, promulgated on March 29, 2000.

[5] *Id.*, p. 22, promulgated on June 8, 1999.

[6] *Id.*, p. 46.

[7] Promulgated on September 19, 2007, 533 SCRA 539.

"1. There must be proof of remorse and reformation. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.

2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reform.

3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.

4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service.

5. There must be other relevant factors and circumstances that may justify clemency."

Applying the foregoing standards to this case, the Court finds merit in petitioner's request.

A review of the records reveals that petitioner has exhibited remorse for her past misdeeds, which occurred more than ten (10) years ago. While she was found to have belatedly filed her motions for additional time to resolve the aforecited cases, the Court noted that she had disposed of the same within the extended period sought, except in A.M. No. 99-2-79-RTC where she submitted her compliance beyond the approved 45-day extended period.[8] Nevertheless, petitioner has subsequently shown diligence in the performance of her duties and has not committed any similar act or omission.[9] In the Memorandum of the Office of the Court Administrator, her prompt compliance

[8] *Rollo*, p. 39.

[9] *Id.*, pp. 1-2.

with the judicial audit requirements of pending cases was acknowledged and she was even commended for her good performance in the effective management of her court and in the handling of court records.[10]

Moreover, the Integrated Bar of the Philippines (IBP) Bohol Chapter has shown its high regard for petitioner per the letter of support[11] signed by a number of its members addressed to the IBP dated October 15, 1999 during the pendency of her administrative cases and the IBP Resolution No. 11, Series of 2009[12] endorsing her application for lateral transfer to the RTC of Tagbilaran City.

Petitioner's dedicated service of 23 years to the judiciary, having been first appointed as Municipal Circuit Trial Court judge in 1989,[13] merits compassion from the Court. It bears to note that petitioner does not seek for promotion to a higher position but only a lateral transfer to a place of work near her residence.[14]

ACCORDINGLY, the Court hereby **GRANTS** petitioner judicial clemency for her past administrative offenses.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Sereno, and *Reyes, JJ.,* concur.

Del Castillo, J., on official leave.

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[10] *Id.*, pp. 5, 56 and 59.

[11] *Id.*, pp. 50-54.

[12] *Id.*, p. 55.

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

[14] *Id.*, p. 5.

EN BANC

[G.R. Nos. 162335 & 162605. March 6, 2012]

SEVERINO M. MANOTOK IV, FROILAN M. MANOTOK, FERNANDO M. MANOTOK III, MA. MAMERTA M. MANOTOK, PATRICIA L. TIONGSON, PACITA L. GO, ROBERTO LAPERAL III, MICHAEL MARSHALL V. MANOTOK, MARYANN MANOTOK, FELISA MYLENE V. MANOTOK, IGNACIO V. MANOTOK, JR., MILAGROS V. MANOTOK, SEVERINO MANOTOK III, ROSA R. MANOTOK, MIGUEL A.B. SISON, GEORGE M. BOCANEGRA, MA. CRISTINA E. SISON, PHILIPP L. MANOTOK, JOSE CLEMENTE L. MANOTOK, RAMON SEVERINO L. MANOTOK, THELMA R. MANOTOK, JOSE MARIA MANOTOK, JESUS JUDE MANOTOK, JR. and MA. THERESA L. MANOTOK, represented by their Attorney-in-fact, ROSA R. MANOTOK, *petitioners, vs.* **HEIRS OF HOMER L. BARQUE, represented by TERESITA BARQUE HERNANDEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; REMAND BY THE SUPREME COURT TO THE COURT OF APPEALS OF CASE TO RESOLVE THE ISSUE OF OWNERSHIP OF HUGE TRACT OF FRIAR LAND; CASE AT BAR.— [T]he Manotoks contend that our Resolution of December 18, 2008 terminated the appeal from the Land Registration Authority (LRA) x x x The appeal having been terminated, the Manotoks argued that the remand to the CA for evidence-taking had introduced a new "case" in which this Court will decide, in the first instance, an "alleged" ownership issue over the property. Such action is legally infirm since the law has vested exclusive original jurisdiction over civil actions involving title to real property on the trial courts. The argument is untenable. x x x Given the contentious factual issues, it was necessary for this Court to resolve the same for the complete determination of

the present controversy involving a huge tract of friar land. It was thus not the first time the Court had actually resorted to referring a factual matter pending before it to the CA.

2. CIVIL LAW; PROPERTY; POSSESSOR OF LAND IN THE CONCEPT OF OWNER; PRESUMPTION OF LEGAL TITLE PREVAILS UNTIL CONTRARY IS PROVED.— [T]he Manotoks argue that as owners in possession, they had no further duty to defend their title pursuant to Article 541 of the Civil Code which states that: "[a] possessor in the concept of owner has in his favor the legal presumption that he possesses with a just title and he cannot be obliged to show or prove it." But such presumption is *prima facie,* and therefore it prevails *until the contrary is proved.*

3. ID.; ID.; SALE OF FRIAR LANDS; APPROVAL BY THE SECRETARY OF AGRICULTURE AND COMMERCE, INDISPENSABLE FOR ITS VALIDITY; ABSENCE THEREOF RENDERS THE SALE VOID AND INEXISTENT.— As this Court categorically ruled in *Alonso v. Cebu Country Club, Inc.*, "approval by the Secretary of Agriculture and Commerce of the sale of friar lands is indispensable for its validity, hence, the absence of such approval made the sale *null and void ab initio*." x x x As to the applicability of Art. 1317 of the Civil Code, we maintain that contracts of sale lacking the approval of the Secretary fall under the class of void and inexistent contracts enumerated in Art. 1409 which cannot be ratified. Section 18 of Act No. 1120 mandated the approval by the Secretary for a sale of friar land to be valid.

4. ID.; ID.; ID.; NEGATED WITH THE FAILURE OF THE LAND MANAGEMENT BUREAU (LMB) TO PRODUCE THE FRIAR LANDS SALES REGISTRY.— The Friar Lands Act mandated a system of recording all sale contracts to be implemented by the Director of Lands, which has come to be known as the Friar Lands Sales Registry. x x x It is thus the primary duty of the Chief of the Bureau of Public Lands to record all these deeds and instruments in sales registry books which shall be retained in the Bureau of Public Lands. Unfortunately, the Land Management Bureau (LMB) failed to produce the sales registry book in court, which could have clearly shown the names of claimants, the particular lots and

areas applied for, the sale certificates issued and other pertinent information on the sale of friar lands within the Piedad Estate.

CARPIO, *J., dissenting opinion:*

1. CIVIL LAW; PROPERTY; SALE OF FRIAR LAND; DENR MEMORANDUM ORDER (MO) NO. 16-05; ISSUED TO REMOVE DOUBTS AS TO THE VALIDITY OF ALL TORRENS TRANSFER CERTIFICATES OF TITLE ISSUED OVER FRIAR LANDS NOT BEARING THE SIGNATURE OF THE SECRETARY OF INTERIOR/AGRICULTURE.— [T]he former DENR Secretary states in his Affidavit that *all* the deeds examined by LMB personnel on file with the LMB, CENRO and the National Archives do not have the signature of the Secretary of the Interior or the Secretary of Agriculture and Natural Resources. x x x Hence, DENR Memorandum Order No. 16-05 was issued precisely to "remove doubts or dispel objections as to the validity of all Torrens transfer certificates of title issued over friar lands, where such doubts or objections arise either from the lack of signature of then Secretary of the Interior or the Secretary of Agriculture and Natural Resources on the deed of conveyance that have led to the issuance of said titles, or because of the loss or unavailability of such deeds or of the records from which the Secretary's signature or approval may be verified." **DENR Memorandum Order No. 16-05 was not limited to the Banilad Estate but applied to all friar lands in the Philippines because all deeds of conveyance, regardless of where located, did not have the signature of the Secretary.**

2. ID.; ID.; ID.; RA NO. 9443 CONFIRMING THE VALIDITY OF TCTs COVERING BANILAD FRIAR LANDS ESTATE IN CEBU; SHOULD BE EXTENDED TO LANDS SIMILARLY SITUATED.— Congress passed Republic Act No. 9443 "confirming and declaring, subject to certain exceptions, the validity of existing TCTs and reconstituted certificates of title covering the Banilad Friar Lands Estate situated in Cebu." x x x While RA 9443 refers only to the Banilad Estate, to limit its application solely to the Banilad Estate will result in class legislation. RA 9443 should be extended to lands similarly situated; otherwise, there will be violation of the equal protection clause of the Constitution. x x x There is no substantial distinction between the lands in

the Banilad Estate and the other friar lands all over the country except for their location. The Court further stated in the *BSP* case. x x x Since the lack of signatures and absence of approval by the Secretary of Interior/Agriculture and the Director of Lands were cured with the passage of RA 9443, the benefits of the law should also apply to other **lands similarly situated**.

3. ID.; ID.; ID.; SALE CERTIFICATE NO. 1054; THE SAME SUFFICIENTLY ESTABLISHED BY DOCUMENTS, AND THE RECORDS OF THE NATIONAL ARCHIVES ON THE EXISTENCE THEREOF ARE SUPPORTED AND CONFIRMED BY THE RECORDS OF THE LAND MANAGEMENT BUREAU (LMB).— It is unfortunate that the LMB no longer has a copy of the original Sale Certificate No. 1054, dated 10 March 1919. x x x However, the Manotoks presented **three incontrovertible documents to establish the existence of Sale Certificate No. 1054**. x x x The records of the National Archives on the existence of Sale Certificate No. 1054 are supported and confirmed by the records of the LMB.

4. ID.; ID.; ID.; DENR MO NO. 1605; THAT ALL DEEDS OF CONVEYANCE THAT DO NOT BEAR THE SIGNATURE OF THE SECRETARY ARE DEEMED SIGNED PROVIDED THE PURCHASE PRICE OF THE LAND IS FULLY PAID; MUST BE APPLIED IN CASE AT BAR.— DENR Memorandum Order No. 16-05 declared that "all Deeds of Conveyance that do not bear the signature of the Secretary are deemed signed or otherwise ratified by this Memorandum Order provided, however, that full payment of the purchase price of the land and compliance with all the other requirements for the issuance of the Deed of Conveyance under Act 1120 have been accomplished by the applicant[.]" x x x **Since the majority expressly admit that upon full payment of the purchase price ownership of the friar land passes to the purchaser, despite the failure of the Secretary to sign the Deed of Conveyance, then the majority must also necessarily admit that the Manotoks became the absolute owners of the land upon their full payment of the purchase price on 7 December 1932**.

5. ID.; ID.; ID.; THAT THE LMB COULD NO LONGER PRODUCE THE FRIAR LANDS SALES REGISTRY BOOK, SHOULD

NOT BE TAKEN AGAINST THE PURCHASER.— [T]he LMB could no longer produce the sales registry book because it was no longer with the Records Management Division of the LMB. x x x [T]he Manotoks should not be punished if the documents leading to the issuance of TCT No. 22813 could no longer be found in the files of the government office, considering that these were pre-war documents and considering further the lack of proper preservation of documents in some government offices. The Certificate of Sale to the original assignors is not on file with the LMB for reasons that could not be attributed to the Manotoks' fault. While the Court must exercise prudence in settling claims over friar lands, it should not set aside documents which establish the existence of Sale Certificate No. 1054. x x x Further, the Court could not insist on the presentation of the original sale certificate from the Manotoks. The safekeeping of the original sale certificates is the responsibility of the government. It is only optional for the landowners to keep them. x x x As long as landowners can show other evidence to prove their ownership, they should not be dispossessed of their titles.

APPEARANCES OF COUNSEL

Felix B. Lerio, Ret. Justice Florentino P. Feliciano and *Sycip Salazar Hernandez & Gatmaitan* for petitioners.

Maria Cynthia Antonia V. Sardillo-Pimentel for respondents.

Espejo and Associates for Heirs of Homer L. Barque.

Romeo C. De La Cruz for intervenors.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

At bar are the motions for reconsideration separately filed by the Manotoks, Barques and Manahans of our Decision promulgated on August 24, 2010, the dispositive portion of which reads:

WHEREFORE, the petitions filed by the Manotoks under Rule 45 of the 1997 Rules of Civil Procedure, as amended, as well as the

petition-in-intervention of the Manahans, are DENIED. The petition for reconstitution of title filed by the Barques is likewise DENIED. TCT No. RT-22481 (372302) in the name of Severino Manotok IV, *et al.*, TCT No. 210177 in the name of Homer L. Barque and Deed of Conveyance No. V-200022 issued to Felicitas B. Manahan, are all hereby declared NULL and VOID. The Register of Deeds of Caloocan City and/or Quezon City are hereby ordered to CANCEL the said titles. The Court hereby DECLARES that Lot 823 of the Piedad Estate, Quezon City legally belongs to the NATIONAL GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, without prejudice to the institution of REVERSION proceedings by the State through the Office of the Solicitor General.

With costs against the petitioners.

SO ORDERED.

The Manotoks raised the following grounds in their motion for reconsideration with motion for oral arguments:

1. It is unjust and oppressive to deprive the Manotoks of property they have long held and acquired from the State, on consideration fully paid and received, and under registered title issued by the State itself, on nothing more than the assumed failure of the State's agents to inscribe a ministerial "approval" on the transaction deeds.

2. The annulment of Friar Land sales, simply because *physical evidence* of the Secretary's ministerial approval can no longer be found, may void transactions involving thousands of hectares of land, and affect possibly millions of people to whom the lands may have since been parceled out, sold and resold.

3. The Manotoks were given no due notice of the issue of reversion, which this case on appeal did not include, and which was thrust upon the Manotoks only in the final resolution disposing of the appeal.

It would be error for the Honorable Court to let this matter go without a serious and full re-examination. This can be accomplished, among others, by allowing this motion for reconsideration to be heard on *oral argument*, to try to permit all pertinent considerations to be aired before the Court and taken into account.

4. These G.R. Nos. 162335 and 162605 were an appeal from administrative reconstitution proceedings before LRA Reconstitution

officer Benjamin Bustos. But the Resolution dated 18 December 2008 which finally reversed the CA's rulings, affirmed the denial by Bustos of the application for administrative reconstitution of the Barques' purported transfer certificate of title, and *terminated* the appeal introduced a new "case" on the Manotok property. It ordered evidence-taking at the CA, on which the Supreme Court proposed itself to decide, in the first instance, an alleged *ownership* controversy over the Manotok property.

5. The Manotoks objected to the "remand" on jurisdictional and due process grounds. The original and exclusive jurisdiction over the subject matter of the case is vested by law on the regional trial courts.

6. The Honorable Court erred in proceeding to judgment divesting the Manotoks of their title to Lot 823 of the Piedad Estate, *without a trial in the courts of original and exclusive jurisdiction, and in disregard of process which the law accords to all owners-in-possession*.

7. The Honorable Court erred in concluding that the Manotoks, despite being owners in possession under a registered title, may be compelled to produce the deeds by which the Government had transferred the property to them, and "failing" which can be divested of their ownership in favor of the Government, even if the latter has not demanded a reversion or brought suit for that purpose.

8. The Honorable Court erred in imposing on the Manotoks, contrary to Art. 541 of the Civil Code, the obligation to prove their ownership of the subject property, and in awarding their title to the Government who has not even sued to contest that ownership.

9. The Honorable Court erred in finding that Sale Certificate No. 1054, which Severino Manotok acquired by assignment in 1923, was not approved by the Director of Lands and the Secretary of Agriculture and Natural Resources, and in finding that a Sale Certificate without the Secretary's approval is void.

10. The Honorable Court erred in concluding that the Manotoks had no valid Deed of Conveyance of Lot 823 from the Government. The original of Deed of Conveyance No. 29204 gave the register of deeds the authority to issue the transfer certificate of title in the name of the buyer Severino Manotok, which is required by law to be filed with and retained in the custody of the register of deeds.We presume that the copy thereof actually transmitted to and received

by the register of deeds did contain the Secretary's signature *because he in fact issued the TCT.* And we rely on this presumption because the document itself can no longer be found.

11. Assuming *arguendo* that the original Deed of Conveyance No. 29204 the register of deeds received did not bear the Department Secretary's signature, DENR Memorandum Order No. 16-05 dated October 27, 2005 cured the defect. To deny the Manotoks the benefit of ratification under said MO, on the erroneous interpretation that it covered only those found in the records of the "field offices" of the DENR and LMB, would be discriminatory. The Department Secretary's (assumed) failure to affix his signature on the deed of conveyance could not defeat the Manotoks' right to the lot after they had fully paid for it.

Republic Act No. 9443 must be applied, *mutatis mutandis*, to the Manotoks and the Piedad Estate.

12. The Honorable Court erred in denying their right to be informed of the CA's report and be heard thereon prior to judgment, as basic requirements of due process.

The Barques anchor their motion for reconsideration on the following:

I

THE HONORABLE SUPREME COURT GRAVELY ERRED IN DENYING THE PETITION FOR RECONSTITUTION FILED BY RESPONDENTS HEIRS OF BARQUE WITHOUT STATING THE GROUNDS FOR SUCH DENIAL.

II

THE HONORABLE SUPREME COURT GRAVELY ERRED IN INSTANTLY DECLARING IN THE DISPOSITIVE PORTION OF THE DECISION THAT ALONG WITH FELICITAS B. MANAHAN'S TITLE, RESPONDENTS HEIRS OF BARQUE'S TITLE TCT NO. 210177 IS LIKEWISE NULL AND VOID, WITHOUT STATING A CLEAR AND DEFINITE BASIS THEREFOR.

III

THE HONORABLE SUPREME COURT GRAVELY ERRED IN DECLARING TRANSFER CERTIFICATE OF TITLE NO. 210177 IN THE NAME OF HOMER L. BARQUE NULL AND VOID.

IV

THE HONORABLE COURT OF APPEALS' FACTUAL FINDINGS, ADOPTED BY THE HONORABLE SUPREME COURT IN THE DECISION DATED 24 AUGUST 2010, ARE CONTRARY TO THE EVIDENCE PRESENTED.

V

THE HONORABLE SUPREME COURT'S FINDINGS IN THE DECISION DATED 24 AUGUST 2010 ARE CONTRARY TO LAW.

As to the Manahans, they seek a partial reconsideration and to allow further reception of evidence, stating the following grounds:

I. As the original of Sale Certificate No. 511 could not be found in the files of the LMB or the DENR-NCR at the time of the hearings before the Commissioners, the existence of the certificate was proven by secondary evidence. The Commissioners erred in ignoring secondary evidence of the contents of Sale Certificate No. 511 because of mere doubt and suspicion as to its authenticity and in the absence of contradicting evidence.

II. The OSG which has been tasked by the Honorable Court to obtain documents from the LMB and DENR-NCR relative to the conveyance of Lot 823, Piedad Estate, furnished intevenors with a certified true copy of Sale Certificate No. 511 which it obtained from the DENR-NCR on September 11, 2010, together with the explanation of DENR-NCR why the document is available only now. (Certified true copy of Sale Certificate No. 511 and Sworn Explanation of Evelyn G. Celzo attached as Annexes "I" and "II".

III. When Valentin Manahan offered to purchase Lot 823, Piedad Estate, being the "actual settler and occupant" who under the law enjoyed preference to buy the lot, his status as "actual settler and occupant" must have been verified by the Bureau of Public Lands because the presumption is that official duty has been regularly performed. The administrative determination of the status of Valentin Manahan as "actual settler and occupant" can not now be reviewed after the lapse of about eight (8) decades when parties, witnesses, documents and other evidence are hardly or no longer available.

IV. Abundant evidence was submitted by intervenors that they and their predecessors-in-interest occupied and possessed Lot 823 up to 1948 when they were dispossessed by armed men. It was error for the Commissioners to ignore the evidence of the intervenors, there being no contradicting proof.

V. The Commissioners committed palpable error in not according evidentiary value to the Investigation Report of Evelyn dela Rosa because it is allegedly "practically a replica or summation of Felicitas B. Manahan's allegations embodied in her petition." Examination of the dates of the documents will show that the Investigation Report preceded the Petition. The Petition, therefore, is based on the Investigation Report, and not the other way around.

VI. The pronouncement of the Commissioners that Sale Certificate No. 511 is stale is incorrect. Intervenors made continuing efforts to secure a deed of conveyance based on Sale Certificate No. 511. Defense of staleness or laches belongs to the party against whom the claim is asserted; it is only that party who can raise it. It can also be waived, as in this case when the LMB which had the sole authority under Act No. 1120 to convey friar lands, issued to intervenor Felicitas B. Manahan Deed of Conveyance No. V-2000-22.

VII. The requirement of Act No. 1120 that a deed of conveyance of friar land must be signed by the Secretary of Interior was dispensed with pursuant to law and Presidential issuances which have the force of law.

VIII. Deeds of conveyance lacking the signature of the Department Secretary were ratified by President Joseph Estrada and DENR Secretary Michael T. Defensor.

The motions are bereft of merit.

Upon the theory that this Court had no power to cancel their certificate of title over Lot 823, Piedad Estate in the resolution of the present controversy, the Manotoks contend that our Resolution of December 18, 2008 terminated the appeal from the Land Registration Authority (LRA) administrative reconstitution proceedings by reversing the CA's rulings and affirming the denial by LRA Reconstitution Officer Benjamin

M. Bustos of the application for administrative reconstitution of the Barques' Transfer Certificate of Title (TCT) No. 210177. The appeal having been terminated, the Manotoks argued that the remand to the CA for evidence-taking had introduced a new "case" in which this Court will decide, in the first instance, an "alleged" ownership issue over the property. Such action is legally infirm since the law has vested exclusive original jurisdiction over civil actions involving title to real property on the trial courts.

The argument is untenable.

In our December 18, 2008 Resolution, we set aside the December 12, 2005 Decision rendered by the First Division and recalled the entry of judgment. We ruled that neither the CA nor the LRA had jurisdiction to cancel the Manotok title, a relief sought by the Barques in the administrative reconstitution proceedings. The Court *En Banc* proceeded with the reevaluation of the cases on a *pro hac vice* basis. During the oral arguments, there were controversial factual matters which emerged as the parties fully ventilated their respective claims, in the course of which the Barques' claim of ownership was found to be exceedingly weak. Indeed, both the LRA and CA erred in ruling that the Barques had the right to seek reconstitution of their purported title. Reevaluation of the evidence on record likewise indicated that the Manotoks' claim to title is just as flawed as that of the Barques. Following the approach in *Alonso v. Cebu Country Club, Inc.*[1] also involving a Friar Land, *Republic v. Court of Appeals*[2] and *Manotok Realty Inc. v. CLT Realty Development Corporation*,[3] the majority resolved to remand this case for reception of evidence on the parties' competing claims of ownership over Lot 823 of the Piedad Estate. Given the contentious factual issues, it was necessary for this Court to resolve the same for the complete determination of the present

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[1] G.R. No. 130876, January 31, 2002, 375 SCRA 390.

[2] 359 Phil. 530 (1998) and G.R. No. 110020, September 25, 1998, 296 SCRA 177.

[3] G.R. Nos. 123346 & 134385, December 14, 2007, 540 SCRA 304, 351-352, citing *Republic v. Court of Appeals,* 359 Phil. 530 (1998).

controversy involving a huge tract of friar land. It was thus not the first time the Court had actually resorted to referring a factual matter pending before it to the CA.

Maintaining their objection to the order for reception of evidence on remand, the Manotoks argue that as owners in possession, they had no further duty to defend their title pursuant to Article 541 of the Civil Code which states that: "[a] possessor in the concept of owner has in his favor the legal presumption that he possesses with a just title and he cannot be obliged to show or prove it." But such presumption is *prima facie,* and therefore it prevails *until the contrary is proved.*[4] In the light of serious flaws in the title of Severino Manotok which were brought to light during the reconstitution proceedings, the Court deemed it proper to give all the parties full opportunity to adduce further evidence, and in particular, for the Manotoks to prove their presumed *just title* over the property also claimed by the Barques and the Manahans. As it turned out, none of the parties were able to establish by clear and convincing evidence a valid alienation from the Government of the subject friar land. The declaration of ownership in favor of the Government was but the logical consequence of such finding.

We have ruled that the existence of Sale Certificate No. 1054 in the records of the DENR-LMB was not duly established. No officer of the DENR-NCR or LMB having official custody of sale certificates covering friar lands testified as to the issuance and authenticity of Exh. 10 submitted by the Manotoks. And even assuming that Exh. 10 was actually sourced from the DENR-LMB, there was no showing that it was duly issued by the Director of Lands and approved by the Secretary of Agriculture and Natural Resources (DENR). On this point, the Manotoks hinted that the LMB's certifying the document (Exh. 10) at the Manotoks' request was a deliberate fraud in order to give them either a false document, the usual unsigned copy of the signed original, or a fake copy.

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[4] Arturo M. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES,* Vol. II, 1992 ed., p. 284.

The Manotoks further assert that this would imply that the LMB either did not produce the genuine article, or could not produce it. This could only mean that the document which the NBI "found" to be fake or spurious, if this Court accepts that finding, was "planted evidence"or evidence inserted in the LMB files to discredit the Manotok title. Nonetheless, the Manotoks insist there were independent evidence which supposedly established the prior existence of Sale Certificate No. 1054. These documents are: (a) photocopy of Assignment of Sale Certificate No. 1054 dated 1929; (b) official receipt of payment for said certified copy; (c) photocopies of the other assignment deeds dated 1923; (d) official receipts of installment payments on Lot 823 issued to Severino Manotok; (e) file copies in the National Archives of the Deed of Conveyance No. 29204; and (f) the notarial registers in which the said Deed of Conveyance, as well as the assignment documents, were entered.

The contentions have no merit, and at best speculative. As this Court categorically ruled in *Alonso v. Cebu Country Club, Inc.*,[5] "approval by the Secretary of Agriculture and Commerce of the sale of friar lands is indispensable for its validity, hence, the absence of such approval made the sale *null and void ab initio*." In that case, the majority declared that no valid titles can be issued on the basis of the sale or assignment made in favor of petitioner's father due to the absence of signature of the Director of Lands and the Secretary of the Interior, and the approval of the Secretary of Natural Resources in the *Sale Certificate* and *Assignment of Sale Certificate.* Applying the *Alonso* ruling to these cases, we thus held that no legal right over the subject friar land can be recognized in favor of the Manotoks under the assignment documents in the absence of the certificate of sale duly signed by the Director of Lands and approved by the Secretary of Agriculture and Natural Resources.

That a valid certificate of sale was issued to Severino Manotok's assignors cannot simply be *presumed* from the

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[5] *Supra* note 1 at 404-405, citing *Liao v. Court of Appeals*, G.R. Nos. 102961-62, 107625 & 108759, January 27, 2000, 323 SCRA 430, 442.

execution of assignment documents in his favor. Neither can it be deduced from the alleged issuance of the half-torn TCT No. 22813, itself a doubtful document as its authenticity was not established, much less the veracity of its recitals because the name of the registered owner and date of issuance do not appear at all. The Manotoks until now has not offered *any* explanation as to such condition of the alleged title of Severino Manotok; they assert that it is the Register of Deeds himself "who should be in a position to explain that condition of the TCT *in his custody*." But then, no Register of Deeds had testified and attested to the fact that *the original of* TCT No. 22813 was under his/her custody, nor that said certificate of title *in the name of Severino Manotok* existed in the files of the Registry of Deeds of Caloocan or Quezon City. The Manotoks consistently evaded having to explain the circumstances as to how and where TCT No. 22813 came about. Instead, they urge this Court to validate their alleged title on the basis of the disputable presumption of regularity in the performance of official duty. Such stance hardly satisfies the standard of clear and convincing evidence in these cases. Even the existence of the official receipts showing payment of the price to the land by Severino Manotok does not prove that the land was legally conveyed to him without any contract of sale having been executed by the government in his favor. Neither did the alleged issuance of TCT No. 22183 in his favor vest ownership upon him over the land nor did it validate the alleged purchase of Lot 283, which is null and void. The absence of the Secretary's approval in Certificate of Sale No. 1054 made the supposed sale null and void *ab initio*.[6]

In the light of the foregoing, the claim of the Barques who, just like the Manahans, were unable to produce an authentic and genuine sale certificate, must likewise fail. The Decision discussed extensively the findings of the CA that the Barques' documentary evidence were either spurious or irregularly procured, which even buttressed the earlier findings mentioned

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[6] See *Solid State Multi-Products Corporation v. Court of Appeals*, G.R. No. 83383, May 6, 1991, 196 SCRA 630, 642.

in the December 18, 2008 Resolution. The CA's findings and recommendations with respect to the claims of *all parties,* have been fully adopted by this Court, as evident in our disquisitions on the indispensable requirement of a validly issued Certificate of Sale over Lot 823, Piedad Estate.

As to the motion of the Manahans to admit an alleged certified true copy of Sale Certificate No. 511 dated June 23, 1913 in the name of Valentin Manahan which, as alleged in the attached Sworn Explanation of Evelyn G. Celzo, the latter had inadvertently failed to attach to her Investigation Report forwarded to the CENRO, this Court cannot grant said motion.

This belatedly submitted copy of Sale Certificate No. 511 was not among those official documents which the Office of the Solicitor General (OSG) offered as evidence, as in fact no copy thereof can be found in the records of either the DENR-NCR or LMB. Moreover, the sudden emergence of this unauthenticated document is suspicious, considering that Celzo who testified, as witness for both the OSG and the Manahans, categorically admitted that she never actually saw the application to purchase and alleged Sale Certificate No. 511 of the Manahans. The relevant portions of the transcript of stenographic notes of the cross- examination of said witness during the hearing before the CA are herein quoted:

ATTY. SAN JUAN:

> How about this part concerning Valentin Manahan having applied for the purchase of the land? Did you get this from the neighbors or from Felicitas Manahan?

x x x x x x x x x

WITNESS:

> No, sir. Only the Records Section, sir, that Valentin Manahan applied, sir.

ATTY. SAN JUAN:

> You did not see Valentin Manahan's application but only the Records Section saw it?

WITNESS:

Yes, sir.

ATTY. SAN JUAN:

Did they tell you that they saw the application?

WITNESS:

I did not go further, sir.

x x x x x x x x x

ATTY. SAN JUAN:

And this report of yours says that Valentin Manahan was issued Sale Certificate No. 511 after completing the payment of the price of ₱2,140?

WITNESS:

Yes, sir.

ATTY. SAN JUAN:

You also got this from the records of the LMB, is that correct?

WITNESS:

Yes, sir.

ATTY. SAN JUAN:

You actually saw the sale certificate that was issued to Valentin Manahan after he paid the price of ₱2,140?

WITNESS:

No, sir. I did not go further.

ATTY. SAN JUAN:

You did not see the sale certificate?

WITNESS:

Yes, Sir, but I asked only.

ATTY. SAN JUAN:

Who did you ask?

WITNESS:

The records officer, sir.

ATTY. SAN JUAN:

Whose name you can no longer recall, correct?

WITNESS:

I can no longer recall, sir.

ATTY. SAN JUAN:

And the **information** to you was the Sale Certificate No. 511 was issued after the price was fully paid?

WITNESS:

Yes, sir.

ATTY. SAN JUAN:

And it was only after he applied for the purchase of the lot sometime after the survey of 1939 that he was issued sale certificate No. 511?

WITNESS:

I am not aware of the issuance of sale certificate. I am aware only of the deed of assignment, Sir.

x x x[7] (Emphasis supplied.)

In view of the above admission, Celzo's explanation that the copy of Sale Certificate No. 511 signed by the Director of Lands and Secretary of the Interior was originally attached to her Investigation Report, cannot be given credence. Even her testimony regarding the conduct of her investigation of Lot 823, Piedad Estate and the Investigation Report she submitted thereafter, failed to impress the CA on the validity of the Manahans' claim. Indeed, records showed that Celzo's findings in her report were merely based on what Felicitas Manahan told her about the alleged occupation and possession by Valentin Manahan of the subject land.

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[7] TSN, November 18, 2009, pp. 46-48, 51-54, 94.

In their Offer of Additional Evidence, the Manahans submitted a photocopy of a letter dated December 21, 2010 allegedly sent by Atty. Allan V. Barcena (OIC, Director) to their counsel, Atty. Romeo C. dela Cruz, which reads:

> This has reference to your letter dated August 20, 2010 addressed to the Secretary of the Department of Environment and Natural Resources (DENR) requesting that Deed of Conveyance No. V-200022 issued on October 30, 2000 over Lot 823 of the Piedad Estate in favor of Felicitas B. Manahan be ratified or confirmed for reasons stated therein. The Office of the DENR Secretary in turn referred the letter to us for appropriate action.
>
> **Records of this Office on Lot 823 of the Piedad Estate, show that the Deed of Conveyance No. V-200022 covering said lot in favor of Felicitas Manahan was issued by then Director of the Land Management Bureau (LMB), now Undersecretary Ernesto D. Adobo, Jr., on October 30, 2000**. The Deed was issued based on General Memorandum Order (GMO) No. 1 issued by then Secretary Jose J. Leido, Jr. of the Department of Natural Resources on January 17, 1977, which authorized the Director of Lands, now Director of LMB, to approve contracts of sale and deeds of conveyance affecting Friar Lands.
>
> It is stressed that the confirmation of the Deed by this office is only as to the execution and issuance based on the authority of LMB Director under GMO No. 1. This is without prejudice to the final decision of the Supreme Court as to its validity in the case of "*Severino Manotok IV, et al. versus Heirs of Homer L. Barque*" (G.R. No. 162335 & 162605).
>
> Please be guided accordingly.[8] (Emphasis supplied.)

However, in the absence of a valid certificate of sale duly signed by the Secretary of Interior or Agriculture and Natural Resources, such alleged confirmation of the execution and issuance by the DENR-LMB of Deed of Conveyance No V-00022 in favor of Felicitas Manahan on October 30, 2000 is still insufficient to prove the Manahans' claim over the subject land.

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[8] *Rollo* (G.R. No. 162605, Vol. 2), pp. 2831-2837.

In a Supplemental Manifestation dated November 18, 2010, the Manotoks submitted an affidavit supposedly executed on November 11, 2010 by former DENR Secretary Michael T. Defensor ("Defensor Affidavit") clarifying that MO 16-05 applies to *all* Deeds of Conveyance that do not bear the signature of the Secretary of Natural Resources, contrary to the CA and this Court's statement that said issuance refers only to those deeds of conveyance on file with the records of the DENR field offices.

By its express terms, however, MO 16-05 covered only deeds of conveyances and not unsigned certificates of sale. The explanation of Secretary Defensor stated the avowed purpose behind the issuance, which is "to remove doubts or dispel objections as to the validity of all Torrens transfer certificates of title issued over friar lands" thereby "ratifying the *deeds of conveyance* to the friar land buyers who have fully paid the purchase price, and are otherwise not shown to have committed any wrong or illegality in acquiring such lands."

The Manahans propounded the same theory that contracts of sale over friar lands without the approval of the Secretary of Natural Resources may be subsequently ratified, but pointed out that unlike the Manotoks' Deed of Conveyance No. 29204 (1932), their Deed of Conveyance No. V-2000-22 (2000) was issued *and* approved by the Director of Lands upon prior authority granted by the Secretary.

In their Consolidated Memorandum dated December 19, 2010, the Manahans reiterated their earlier argument that the LMB Director himself had the authority to *approve* contracts of sale and deeds of conveyance over friar lands on the basis of General Memorandum Order No. 1 issued in 1977 by then Secretary of Natural Resources Jose J. Leido, Jr. delegating such function to the Director of Lands. This delegated power can also be gleaned from Sec. 15, Chapter 1, Title XIV of the Administrative Code of 1987 which provides that the Director of Lands shall "perform such other functions as may be provided by law or assigned by the Secretary." Moreover, former President Corazon C. Aquino

issued Executive Order No. 131 dated January 20, 1987 reorganizing the LMB and providing that the LMB Director shall, among others, perform other functions as may be assigned by the Minister of Natural Resources.

On the basis of Art. 1317[9] of the Civil Code, the Manahans contend that deeds of conveyance not bearing the signature of the Secretary can also be ratified. Further, they cite Proclamation No. 172 issued by former President Joseph Ejercito Estrada which declared that there should be no legal impediment for the LMB to issue such deeds of conveyance since the applicants/purchasers have already paid the purchase price of the lot, and as sellers in good faith, it is the obligation of the Government to deliver to said applicants/purchasers the friar lands sold free of any lien or encumbrance whatsoever. Eventually, when MO 16-05 was issued by Secretary Defensor, all these deeds of conveyance lacking the signature of the Secretary of Natural Resources are thus deemed signed or otherwise ratified. The CA accordingly erred in holding that MO 16-05 cannot override Act No. 1120 which requires that a deed of conveyance must be signed by the Secretary, considering that MO 16-05 is based on law and presidential issuances, particularly EO 131, which have the force of law.

Meanwhile, in compliance with our directive, the Solicitor General filed his Comment on the Defensor Affidavit submitted by the Manotoks. The Solicitor General contends that said document is hearsay evidence, hence inadmissible and without probative value. He points out that former DENR Secretary Defensor was not presented as a witness during the hearings at the CA, thus depriving the parties including the government of the right to cross-examine him regarding his allegations therein.

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[9] Art. 1317. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party.

And even assuming *arguendo* that such affidavit is admissible as evidence, the Solicitor General is of the view that the Manotoks, Barques and Manahans still cannot benefit from the remedial effect of MO 16-05 in view of the decision rendered by this Court which ruled that none of the parties in this case has established a valid alienation from the Government of Lot 823 of the Piedad Estate, and also because the curative effect of MO 16-05 is intended only for friar land buyers whose deeds of conveyance lack the signature of the Secretary of the Interior or Agriculture and Natural Resources, have fully paid the purchase price and are otherwise not shown to have committed any wrong or illegality in acquiring the friar lands. He then emphasizes that this Court has ruled that it is not only the deed of conveyance which must be signed by the Secretary but also the certificate of sale itself. Since none of the parties has shown a valid disposition to any of them of Lot 823 of the Piedad Estate, this Court therefore correctly held that said friar land is still part of the patrimonial property of the national government.

The Court is not persuaded by the "ratification theory" espoused by the Manotoks and Manahans.

The argument that the Director of Lands had delegated authority to approve contracts of sale and deeds of conveyances over friar lands ignores the consistent ruling of this Court in controversies involving friar lands. The aforementioned presidential/**executive issuances notwithstanding**, this Court held in *Solid State Multi-Products Corporation v. CA*,[10] *Liao v. Court of Appeals*,[11] and *Alonso v. Cebu Country Club*[12] that approval of the Secretary of Agriculture and Commerce (later the Natural Resources) is indispensable to the validity of sale of friar land pursuant to Sec. 18 of Act No. 1120 and that the procedure laid down by said law must be strictly complied with.

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[10] *Supra* note 6.

[11] *Supra* note 5.

[12] *Supra* note 5.

As to the applicability of Art. 1317 of the Civil Code, we maintain that contracts of sale lacking the approval of the Secretary fall under the class of void and inexistent contracts enumerated in Art. 1409[13] which cannot be ratified. Section 18 of Act No. 1120 mandated the approval by the Secretary for a sale of friar land to be valid.

In his dissenting opinion, Justice Antonio T. Carpio disagreed with the majority's interpretation of Section 18 of Act No. 1120, and proposed that based on Section 12 of the same Act, it is the Deed of Conveyance that must bear the signature of the Secretary of Interior/Agriculture and Natural Resources "because it is only when the final installment is paid that the Secretary can approve the sale, the purchase price having been fully paid." It was pointed out that the majority itself expressly admit that "it is only a *ministerial duty* on the part of the Secretary to sign the Deed of Conveyance once the applicant had made full payment on the purchase price of the land", citing jurisprudence to the effect that "notwithstanding the failure of the government to issue the proper instrument of conveyance when the purchaser finally pays the final installment of the purchase price, the purchase of the friar land still acquired ownership.

We are unable to agree with the view that it is only the Director of Lands who signs the Certificate of Sale.

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[13] Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

(2) Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) **Those expressly prohibited or declared void by law.**

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived. (Emphasis supplied.)

The official document denominated as "Sale Certificate" clearly required both the signatures of the Director of Lands who issued such sale certificate to an applicant settler/occupant *and* the Secretary of the Interior/Agriculture and Natural Resources indicating his *approval* of the sale. These forms had been prepared and issued by the Chief of the Bureau of Public Lands under the supervision of the Secretary of the Interior, consistent with Act No. 1120 "as may be necessary x x x to carry into effect all the provisions [thereof] that are to be administered by or under [his] direction, and for the conduct of all proceedings arising under such provisions."[14]

We reiterate that Section 18 of Act No. 1120, as amended, is plain and categorical in stating that:

SECTION 18. No lease or sale made by the Chief of the Bureau of Public Lands under the provisions of this Act shall be valid **until** approved by the Secretary of the Interior.

Section 12 did not mention the requirement of signature or approval of the Secretary in the sale certificate and deed of conveyance.

SECTION 12. It shall be the duty of the Chief of the Bureau of Public Lands by proper investigation to ascertain what is the actual value of the parcel of land held by each settler and occupant, taking into consideration the location and quality of each holding of land, and any other circumstances giving [it] value. The basis of valuation shall likewise be, so far as practicable, such [as] the aggregate of the values of all the holdings included in each particular tract shall be equal to the cost to the Government to the entire tract, including the cost of surveys, administration and interest upon the purchase money to the time of sale. When the cost thereof shall have been thus ascertained, the Chief of the Bureau of Public Lands shall give the said settler and occupant a certificate which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him, at the price so fixed, payable as provided in this Act at the office of the Chief of Bureau of Public Lands, in gold coin of the United States or its equivalent

[14] Sec. 24, Act No. 1120.

in Philippine currency, and that upon the payment of the final installment together with [the] accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act. The Chief of the Bureau of Public Lands shall, in each instance where a certificate is given to the settler and occupant of any holding, take his formal receipt showing the delivery of such certificate, signed by said settler and occupant.

On the other hand, the first paragraph of Section 15 provides for the reservation of title in the Government only for the purpose of ensuring payment of the purchase price, which means that the sale was subject only to the resolutory condition of non-payment, while the second paragraph states that the purchaser thereby acquires "the right of possession and purchase" by virtue of a certificate of sale "*signed under the provisions [thereof].*" The certificate of sale evidences the meeting of the minds between the Government and the applicant regarding the price, the specific parcel of friar land, and terms of payment. In *Dela Torre v. Court of Appeals*,[15] we explained that the non-payment of the full purchase price is the only recognized resolutory condition in the case of sale of friar lands. We have also held that it is the execution of the contract to sell and delivery of the certificate of sale that vests title and ownership to the purchaser of friar land.[16] Where there is no certificate of sale issued, the purchaser does not acquire any right of possession and purchase, as implied from Section 15. By the mandatory language of Section 18, the absence of approval of the Secretary of Interior/Agriculture and Natural Resources in the lease or sale of friar land would invalidate the sale. These provisions read together indicate that the approval of the Secretary is required in both the certificate of sale and deed of conveyance, although the lack of signature of the Secretary in the latter may not defeat the rights of the applicant who had fully paid the purchase price.

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[15] G.R. No. 113095, February 8, 2000, 325 SCRA 11, 16.

[16] See *Jovellanos v. Court of Appeals*, G.R. No. 100728, June 18, 1992, 210 SCRA 126, 135.

Justice Conchita Carpio Morales' dissent asserted that case law does *not* categorically state that the required "approval" must be in the form of a *signature* on the Certificate of Sale, and that there is no statutory basis for the requirement of the Secretary's signature on the Certificate of Sale "apart from a strained deduction of Section 18."

As already stated, the official forms being used by the Government for this purpose clearly show that the Director of Lands signs every certificate of sale *issued* covering a specific parcel of friar land in favor of the applicant/purchaser while the Secretary of Interior/Natural Resources signs the document indicating that the sale was *approved* by him. To *approve* is to be satisfied with; to confirm, ratify, sanction, or consent to some act or thing done by another; to sanction officially.[17] The Secretary of Interior/Natural Resources signs and approves the Certificate of Sale to confirm and officially sanction the conveyance of friar lands executed by the Chief of the Bureau of Public Lands (later Director of Lands). It is worth mentioning that Sale Certificate No. 651 in the name of one Ambrosio Berones dated June 23, 1913,[18] also covering Lot 823 of the Piedad Estate and forming part of the official documents on file with the DENR-LMB which was formally offered by the OSG as part of the official records on file with the DENR and LMB pertaining to Lot 823, contains the signature of both the Director of Lands and Secretary of the Interior. The Assignment of Sale Certificate No. 651 dated April 19, 1930 was also signed by the Director of Lands.[19]

Following the dissent's interpretation that the Secretary is not required to sign the certificate of sale while his signature in the Deed of Conveyance may also appear although merely a ministerial act, it would result in the absurd situation wherein the certificate of sale and deed of conveyance both lacked the signature and approval of the Secretary, and yet the purchaser's

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[17] *BLACK'S LAW DICTIONARY,* Fifth Ed., p. 94.

[18] CA *rollo*, Vol. VIII, p. 4272.

[19] *Id.* at 4271.

ownership is ratified, courtesy of DENR Memorandum Order (MO) No. 16-05. It is also not farfetched that greater chaos will arise from conflicting claims over friar lands, which could not be definitively settled until the genuine and official manifestation of the Secretary's approval of the sale is discerned from the records and documents presented. This state of things is simply not envisioned under the orderly and proper distribution of friar lands to *bona fide* occupants and settlers whom the Chief of the Bureau of Public Lands was tasked to identify.[20]

The existence of a valid certificate of sale therefore must first be established with clear and convincing evidence before a purchaser is deemed to have acquired ownership over a friar land *notwithstanding* the non-issuance by the Government, for some reason or another, of a deed of conveyance after completing the installment payments. In the absence of such certificate of sale duly signed by the Secretary, no right can be recognized in favor of the applicant. Neither would any assignee or transferee acquire any right over the subject land.

In *Alonso v. Cebu Country Club, Inc.*,[21] the Court categorically ruled that the absence of approval by the Secretary of Agriculture and Commerce in the sale certificate and assignment of sale certificate made the sale null and void *ab initio.* Necessarily, there can be no valid titles issued on the basis of such sale or assignment.[22]

Justice Carpio, however, opined that the ruling in *Alonso* "was superseded with the issuance by then Department of [Environment] and Natural Resources (DENR) Secretary Michael T. Defensor of DENR Memorandum Order No. 16-05." It was argued that the majority had construed a "limited application" when it declared that the Manotoks could not benefit from said memorandum order because the latter refers only to deeds of conveyance "on file with the records of the DENR *field offices*."

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[20] Sec. 7, Act No. 1120.

[21] *Supra* note 1.

[22] *Id.* at 404-405.

We disagree with the view that *Alonso* is no longer applicable to this controversy after the issuance of DENR MO No. 16-05 which supposedly cured the defect in Manotok's title.

First, DENR MO No. 16-05 explicitly makes reference only to *Deeds of Conveyances*, not to Sale Certificates by which, under the express language of Section 15, the purchaser of friar land acquires the right of possession and purchase pending final payment and the issuance of title, such certificate being duly signed under the provisions of Act No. 1120. Although the whereas clause of MO No. 16-05 correctly stated that it was only a ministerial duty on the part of the Secretary to sign the Deed of Conveyance once the applicant had made full payment on the purchase price of the land, it must be stressed that in those instances where the formality of the Secretary's approval and signature is dispensed with, there was a valid certificate of sale issued to the purchaser or transferor. In this case, there is no indication in the records that a certificate of sale was actually issued to the assignors of Severino Manotok, allegedly the original claimants of Lot 823, Piedad Estate.

Second, it is basic that an administrative issuance like DENR Memorandum Order No. 16-05 must conform to and not contravene existing laws. In the interpretation and construction of the statutes entrusted to them for implementation, administrative agencies may not make rules and regulations which are inconsistent with the statute it is administering, or which are in derogation of, or defeat its purpose. In case of conflict between a statute and an administrative order, the former must prevail.[23] DENR Memorandum Order No. 16-05 cannot supersede or amend the clear mandate of Section 18, Act No. 1120 as to dispense with the requirement of approval by the Secretary of the Interior/Agriculture and Natural Resources of every lease or sale of friar lands.

But what is worse, as the dissent suggests, is that MO 16-05 would apply even to those deeds of conveyances *not* found in

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[23] See Ruben E. Agpalo, *ADMINISTRATIVE LAW, LAW ON PUBLIC OFFICERS AND ELECTION LAW*, 2005 Edition, pp. 59, 62.

the records of DENR or its field offices, such as the Manotoks' Deed of Conveyance No. 29204 sourced from the National Archives. It would then cover cases of claimants who have not been issued any certificate of sale but were able to produce a deed of conveyance in their names. The Bureau of Lands was originally charged with the administration of all laws relative to friar lands, pursuant to Act No. 2657 and Act No. 2711. Under Executive Order No. 192,[24] the functions and powers previously held by the Bureau of Lands were absorbed by the Lands Management Bureau (LMB) of the DENR, while those functions and powers not absorbed by the LMB were transferred to the regional field offices.[25] As pointed out by the Solicitor General in the Memorandum submitted to the CA, since the LMB and DENR-NCR exercise sole authority over friar lands, they are naturally the "sole repository of documents and records relative to Lot No. 823 of the Piedad Estate."[26]

Third, the perceived disquieting effects on titles over friar lands long held by generations of landowners cannot be invoked as justification for legitimizing any claim or acquisition of these lands obtained through fraud or without strict compliance with the procedure laid down in Act No. 1120. This Court, in denying with finality the motion for reconsideration filed by petitioner in *Alonso v. Cebu Country Club, Inc.*[27] reiterated the settled rule that "[a]pproval by the Secretary of the Interior cannot simply be presumed or inferred from certain acts since the law is explicit in its mandate."[28] Petitioners failed to discharge their burden of proving their acquisition of title by clear and convincing evidence, considering the nature of the land involved.

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[24] REORGANIZATION ACT OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, issued on June 10, 1987, Secs. 6 and 14.

[25] *Id.*, Secs. 20 and 21.

[26] CA *rollo*, Vol. XV, pp. 10571-10577.

[27] 462 Phil. 546 (2003).

[28] *Id.* at 561.

As consistently held by this Court, friar lands can be alienated only upon proper compliance with the requirements of Act No. 1120. The issuance of a valid certificate of sale is a condition *sine qua non* for acquisition of ownership under the Friar Lands Act. Otherwise, DENR Memorandum Order No. 16-05 would serve as administrative *imprimatur* to holders of deeds of conveyance whose acquisition may have been obtained through irregularity or fraud.

Contrary to the dissent of Justice Maria Lourdes P. A. Sereno that our decision has "created dangers for the system of property rights in the Philippines", the Court simply adhered strictly to the letter and spirit of the Friar Lands Act and jurisprudence interpreting its provisions. Such imagined scenario of instability and chaos in the established property regime, suggesting several other owners of lands formerly comprising the Piedad Estate who are supposedly similarly situated, remains in the realm of speculation. Apart from their bare allegations, petitioners (Manotoks) failed to demonstrate how the awardees or present owners of around more than 2,000 hectares of land in the Piedad Estate can be embroiled in legal disputes arising from unsigned *certificates of sale*.

On the other hand, this Court must take on the task of scrutinizing even certificates of title held for decades involving lands of the public domain and those lands which form part of the Government's patrimonial property, whenever necessary in the complete adjudication of the controversy before it or where apparent irregularities and anomalies are shown by the evidence on record. There is nothing sacrosanct about the landholdings in the Piedad Estate as even prior to the years when Lot 823 could have been possibly "sold" or disposed by the Bureau of Lands, there were already reported anomalies in the distribution of friar lands in general.[29]

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[29] See Rene R. Escalante, *THE AMERICAN FRIAR LANDS POLICY: ITS FRAMERS, CONTEXT, AND BENEFICIARIES*, 1898-1916 by 2002 (De La Salle University Press, Inc.) Under the Chapter on "The Travesty of the Land-to-the-Tiller Program", the author wrote:

Significantly, subsequent to the promulgation of our decision in *Alonso*, Republic Act No. (RA) 9443 was passed by Congress confirming and declaring, subject to certain exceptions, the validity of existing TCTs and reconstituted certificates of title covering the Banilad Friar Lands Estate situated in Cebu. *Alonso* involved a friar land already titled but without a sale certificate, and upon that ground we declared the registered owner as not having acquired ownership of the land. RA 9443 validated the titles "notwithstanding the lack of signatures and/or approval of the then Secretary of Interior (later Secretary of Agriculture and Natural Resources) and/or the then Chief of the Bureau of Public lands (later Director of Public Lands) in the copies of the duly executed Sale Certificate and Assignments of Sale Certificates, as the case may be, now on file with the Community Environment and Natural Resources Office (CENRO), Cebu City".

The enactment of RA 9443 signifies the legislature's recognition of the statutory basis of the *Alonso* ruling to the effect that in the absence of signature and/or approval of the Secretary of Interior/Natural Resources in the Certificates of Sale on file with the CENRO, the sale is not valid and the purchaser has not acquired ownership of the friar land. Indeed, Congress found it imperative to pass a new law in order *to exempt the already titled portions of the Banilad Friar Lands Estate* from

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The acreage limitation and pro-tenant provisions of the policy were not consistently observed by the implementing agencies. Many buyers and lessees were neither tenants nor occupants of the friar lands. Moreover, the acreage that they obtained exceeded the ceiling imposed by the policy. Eighty-two out of the recorded 8,847 buyers in 1910 violated the 16-hectare limitation.

The anomalies in the redistribution of the friar lands could be attributed to the officials of the insular government, as most of the beneficiaries of these anomalies were identified with them. Instead of giving the friar lands to the intended recipients, the officials awarded the friar lands to themselves, their associates, and their relatives. x x x (pp. 141-142).

x x x x x x x x x

The Jones Law of 1916 stripped the Americans of powers over the administration of the friar lands, and all unsold friar lands were placed under the control of the Philippine legislature. x x x From then on, the fate of the friar lands was in the hands of Filipino politicians and bureaucrats. (p. 154).

the operation of Section 18. This runs counter to the dissent's main thesis that a mere administrative issuance (DENR MO No. 16-05) would be sufficient to cure the lack of signature and approval by the Secretary in Certificate of Sale No. 1054 covering Lot 823 of the Piedad Estate.

In any event, the Manotoks now seek the application of RA 9443 to the Piedad Estate, arguing that for said law to be constitutionally valid, its continued operation must be interpreted in a manner that does not collide with the equal protection clause. Considering that the facts in *Alonso* from which RA 9443 sprung are similar to those in this case, it is contended that there is no reason to exclude the Piedad Estate from the ambit of RA 9443.

Justice Carpio's dissent concurs with this view, stating that to limit its application to the Banilad Friar Lands Estate will result in class legislation. RA 9443 supposedly should be extended to lands similarly situated, citing the case of *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*.[30]

In the aforesaid case, the Court extended the benefits of subsequent laws exempting all rank-and-file employees of other government financing institutions (GFIs) from the Salary Standardization Law (SSL) to the rank-and-file employees of the BSP. We upheld the position of petitioner association that the continued operation of Section 15 (c), Article II of RA 7653 (the New Central Bank Act), which provides that the compensation and wage structure of employees whose position fall under salary grade 19 and below shall be in accordance with the rates prescribed under RA 6758 (SSL), constitutes "invidious discrimination on the 2,994 rank-and-file employees of the [BSP]". Thus, as regards the exemption from the SSL, we declared that there were no characteristics peculiar only to the seven GFIs or their rank-and-file so as to justify the exemption from the SSL which BSP rank-and-file employees were denied. The distinction made by the law is superficial, arbitrary and not

[30] G.R. No. 148208, December 15, 2004, 446 SCRA 299.

based on substantial distinctions that make real differences between BSP rank-and-file and the seven other GFIs.[31]

We are of the opinion that the provisions of RA 9443 may not be applied to the present case as to cure the lack of signature of the Director of Lands and approval by the Secretary of Agriculture and Natural Resources in Sale Certificate No. 1054.

The Court has explained the nature of equal protection guarantee in this manner:

> The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. **It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate.** It does not demand absolute equality among residents; **it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.** The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.[32] (Emphasis and underscoring supplied.)

Section 1 of RA 9443 provides:

> **Section 1.** All **existing Transfer Certificates of Title and Reconstituted Certificates of Title duly issued by the Register of Deeds** of Cebu Province and/or Cebu City covering any portion of the Banilad Friar Lands Estate, notwithstanding the lack of signatures and/or approval of the then Secretary of the Interior (later Secretary of Agriculture and Natural Resources) and/or the then Chief of the Bureau of Public Lands (later Director of Public Lands) **in the copies**

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[31] *Id.* at 367.

[32] *Fariñas v. The Executive Secretary*, G.R. Nos. 147387 & 152161, December 10, 2003, 417 SCRA 503, 525-526, citing *Ichong, etc., et al. v. Hernandez, etc., and Sarmiento*, 101 Phil. 1155, 1164 (1957) and 2 Cooley, *CONSTITUTIONAL LIMITATIONS*, pp. 824-825.

of the duly executed Sale Certificates and Assignments of Sales Certificates, as the case may be, now on file with the Community Environment and Natural Resources Office (CENRO), Cebu City, are hereby confirmed and declared as valid titles and the registered owners recognized as absolute owners thereof.

This confirmation and declaration of validity shall in all respects be entitled to like effect and credit as a decree of registration, binding the land and quieting the title thereto and shall be conclusive upon and against all persons, including the national government and al1 branches thereof; **except when, in a given case involving a certificate of title or a reconstituted certificate of title, there is clear evidence that such certificate of title or reconstituted certificate of title was obtained through fraud,** in which case the solicitor general or his duly designated representative shall institute the necessary judicial proceeding to cancel the certificate of title or reconstituted certificate of title as the case may be, obtained through such fraud. (Emphasis supplied.)

Without ruling on the issue of violation of equal protection guarantee if the curative effect of RA 9443 is not made applicable to *all* titled lands of the Piedad Estate, it is clear that the Manotoks cannot invoke this law to "confirm" and validate their alleged title over Lot 823. It must be stressed that the *existence and due issuance* of TCT No. 22813 in the name of Severino Manotok was not established by the evidence on record. There is likewise no copy of a "duly executed certificate of sale" "on file" with the DENR regional office. In the absence of an existing certificate of title in the name of the predecessor-in-interest of the Manotoks and certificate of sale on file with the DENR/CENRO, there is nothing to confirm and validate through the application of RA 9443.

Moreover, RA 9443 expressly excludes from its coverage those cases involving certificates of title which were shown to have been fraudulently or irregularly issued. As the reconstitution and remand proceedings in these cases revealed, the Manotoks' title to the subject friar land, just like the Barques and Manahans, is seriously flawed. The Court cannot allow them now to invoke the benefit of confirmation and validation of ownership of friar

lands under *duly executed documents*, which they never had in the first place. Strict application by the courts of the mandatory provisions of the Friar Lands Act is justified by the laudable policy behind its enactment — to ensure that the lands acquired by the government would go to the actual occupants and settlers who were given preference in their distribution.[33]

The dissent reiterates that the existence of Sale Certificate No. 1054 was clearly and convincingly established by the original of Assignment of Sale Certificate No. 1054 dated May 4, 1923 between M. Teodoro and Severino Manotok as assignors and Severino Manotok as assignee (approved by the Director of Lands on June 23, 1923), which is on file with the LMB, as well as the Deed of Conveyance No. 29204 secured from the National Archives which is the repository of government and official documents, the original of Official Receipt No. 675257 dated 20 February 1920 for certified copy of Assignment of Sale Certificate No. 1054 on Lot 823 and the original of the Provincial Assessor's declaration of title in Severino Manotok's name for tax purposes on August 9, 1933 assessing him beginning with the year 1933. The dissent further listed some of those alleged sale certificates, assignment deeds and deeds of conveyance either signed by the Director of Lands only or unsigned by both Director of Lands and Secretary of Interior/ Natural Resources, gathered by the Manotoks from the LMB. It was stressed that if MO 16-05 is not applied to these huge tracts of land within and outside Metro Manila, "[H]undreds of thousands, if not millions, of landowners would surely be dispossessed of their lands in these areas," "a blow to the integrity of our Torrens system and the stability of land titles in this country."

The Court has thoroughly examined the evidence on record and exhaustively discussed the merits of the Manotoks' ownership claim over Lot 823, in the light of established precedents interpreting the provisions of the Friar Lands Act. The dissent

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[33] See R. Escalante, *supra* note 22 at 83.

even accused the majority of mistakenly denigrating the records of the National Archives which, under R.A. No. 9470 enacted on May 21, 2007, is mandated to store and preserve "any public archive transferred to the National Archives" and tasked with issuing certified true copies or certifications on public archives and for extracts thereof.

The Friar Lands Act mandated a system of recording all sale contracts to be implemented by the Director of Lands, which has come to be known as the Friar Lands Sales Registry.

> SEC. 6. The title, deeds and instruments of conveyance pertaining to the lands in each province, when executed and delivered by said grantors to the Government and placed in the keeping of the Chief of the Bureau of Public Lands, as above provided, shall be by him transmitted to the register of deeds of each province in which any part of said lands lies, for registration in accordance with law. **But before transmitting the title, deeds, and instruments of conveyance in this section mentioned to the register of deeds of each province for registration, the Chief of the Bureau of Public Lands shall record all such deeds and instruments at length in one or more books to be provided by him for that purpose and retained in the Bureau of Public Lands**, when duly certified by him shall be received in all courts of the Philippine Islands as sufficient evidence of the contents of the instrument so recorded whenever it is not practicable to produce the originals in court. (Section 1, Act No. 1287).

It is thus the primary duty of the Chief of the Bureau of Public Lands to record all these deeds and instruments in sales registry books which shall be retained in the Bureau of Public Lands. Unfortunately, the LMB failed to produce the sales registry book in court, which could have clearly shown the names of claimants, the particular lots and areas applied for, the sale certificates issued and other pertinent information on the sale of friar lands within the Piedad Estate. Witness Teresita J. Reyes, a retired Assistant Chief of the Records Management Division (RMD), LMB who was presented by the Manahans, testified that when the LMB was decentralized, the sales registry

books pertaining to friar lands were supposedly turned over to the regional offices. These consisted of copies of the appropriate pages of the sales registry books in the LMB RMD main office which has an inventory of lots subject of deeds of conveyance and sales certificates. However, Reyes said that the sales registry book itself is no longer with the RMD. On the other hand, the alleged affidavit of Secretary Defensor dated November 11, 2010 states that MO 16-05 was intended to address situations when deeds of conveyance lacked the signature of the Secretary of Agriculture and Commerce, or such deeds or records from which the Secretary's signature or approval may be verified were lost or unavailable.

Whether the friar lands registry book is still available in the LMB or properly turned over to the regional offices remains unclear. With the statutorily prescribed record-keeping of sales of friar lands apparently in disarray, it behooves on the courts to be more judicious in settling conflicting claims over friar lands. Titles with serious flaws must still be carefully scrutinized in each case. Thus, we find that the approach in *Alonso* remains as the more rational and prudent course than the wholesale ratification introduced by MO 16-05.

The prospect of litigants losing friar lands they have possessed for years or decades had never deterred courts from upholding the stringent requirements of the law for a valid acquisition of these lands. The court's duty is to apply the law. Petitioners' concern for other landowners which may be similarly affected by our ruling is, without doubt, a legitimate one. The remedy though lies elsewhere — in the legislature, as what R.A. 9443 sought to rectify.

WHEREFORE, the present motions for reconsideration are all hereby **DENIED with FINALITY**. The motions for oral arguments and further reception of evidence are likewise **DENIED**.

Let entry of judgment be made in due course.

SO ORDERED.

Corona, C.J., Leonardo-de Castro, Peralta, Bersamin, Perez, and *Mendoza, JJ.,* concur.

Carpio, J., see dissenting opinion.

Velasco, Jr., Brion, Abad, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* join the dissent of *J.* Carpio.

Del Castillo, J., the *C.J.* certifies that *J.* del Castillo sent his vote concurring with Justice Villarama, Jr.

DISSENTING OPINION

CARPIO, *J.*:

In its 24 August 2010 Decision, the Court held:

> WHEREFORE, the petitions filed by the Manotoks under Rule 45 of the 1997 Rules of Civil Procedure, as amended, as well as the petition-in-intervention of the Manahans, are DENIED. The petition for reconstitution of title filed by the Barques are likewise DENIED. TCT No. RT-22481 (372302) in the name of Severino Manotok IV, *et al.*, TCT No. 210177 in the name of Homer L. Barque and Deed of Conveyance No. V-200022 issued to Felicitas B. Manahan, are all hereby declared NULL and VOID. The Register of Deeds of Caloocan City and/or Quezon City are hereby ordered to CANCEL the said titles. The Court hereby DECLARES that Lot 823 of the Piedad Estate, Quezon City legally belongs to the NATIONAL GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, without prejudice to the institution of REVERSION proceedings by the State through the Office of the Solicitor General.
>
> With costs against the petitioners.
>
> SO ORDERED.

The Manotoks, the Barques and the Manahans filed their respective motions for reconsideration of the Decision.

I reiterate my dissent to the majority opinion.

In their motion for reconsideration, the Manotoks submitted the Affidavit, dated 11 November 2010, of former DENR Secretary Michael T. Defensor who issued DENR Memorandum Order No. 16-05.[1] The Affidavit states:

REPUBLIC OF THE PHILIPPINES)
CITY OF MAKATI) s.s.

AFFIDAVIT

I, MICHAEL T. DEFENSOR, Filipino, of legal age, with residence at 10 Ifugao St., La Vista Subdivision, Quezon City, after having been sworn in accordance with law, hereby depose and state:

1. I was the Secretary of the Department of Environment and Natural Resources ("DENR") form July 2004 to February 2006.

2. Sometime in the third quarter of 2005, His Eminence Ricardo J. Cardinal Vidal, Archbishop of Cebu, brought to the attention of the DENR that several land owners whose properties formed part of the friar lands sold by the government pursuant to Act No. 1120 or the Friar Lands Act – including a property of the Roman Catholic Church, situated in the Banilad Estates – have raised concerns on the continuing validity of their Torrens titles over these lots in view of the Supreme Court's resolution in *Alonso v. Cebu Country Club*, G.R. No. 130876, December 5, 2003, which held that:

> Section 18 of Act No. 1120 or the Friar Lands Act unequivocally provides: "No lease or sale made by the Chief of the Bureau of Public Lands (now Director of Lands) under the provisions of this Act shall be valid until approved by the Secretary of Interior (now, the Secretary of Natural Resources). Thus, petitioners' claim of ownership must fail in the absence of positive evidence showing the approval of the Secretary of Interior. Approval of the Secretary of the Interior cannot simply be presumed or inferred from certain acts since the law is explicit in its mandate.

3. Cardinal Vidal, together with several land owners whose properties were contiguous to the disputed parcel of land in *Alonso*, informed the DENR that available copies of the Government's deeds of conveyance over the friar lots sold to them lacked the signature

[1] Dated 27 October 2005.

of the Secretary of the Interior or the Secretary of Agriculture and Natural Resources, as the case may be. These title holders expressed concern about the effect of the *Alonso* decision on their ownership of those lots.

4. I then ordered the personnel of the Land Management Bureau ("LMB") to look into these concerns, and, in particular, to examine the records on file with the LMB, CENRO or National Archives and verify if the deeds of conveyance of friar lands in their custody bear the signature of the Secretary. *It was determined that all of the deeds they examined did not have the signature of the Secretary*.

5. In view of these, and of the implications of the *Alonso* decision on the Torrens titles issued to buyers of friar lands, **for which the full purchase price had already been acknowledged received by the government**, the DENR, on October 27, 2005, issued Memorandum Order No. 16-05, which declared that

> "[A]ll Deeds of Conveyance that do not bear the signature of the Secretary are deemed signed or otherwise ratified by Memorandum Order [No. 16-05,] provided, however, that full payment of the purchase price of the land and compliance with all the other requirements for the issuance of the Deed of Conveyance under Act 1120 have been accomplished by the applicant."

6. DENR Memorandum Order No. 16-05 was intended to remove doubts or dispel objections as to the validity of all Torrens transfer certificates of title issued over friar lands, where such doubts or objections arise either from the lack of signature of then Secretary of Interior or then Secretary of Agriculture and Natural Resources on the deeds of conveyance that have led to the issuance of the said titles, or because of the loss or unavailability of such deeds or of the records from which the Secretary's signature or approval may be verified.

7. DENR Memorandum Order No. 16-05 was intended to preserve the integrity of the Torrens system and affirm the Government's obligation as seller, by ratifying the deeds of conveyance to the friar land buyers who have fully paid the purchase price, and are otherwise not shown to have committed any wrong or illegality in acquiring such lands.

Further I say none.

I hereby attest to the truth of the foregoing and hereunto set my hand this [11th] day of November 2010.

MICHAEL T. DEFENSOR
Affiant[2]

In short, the former DENR Secretary states in his Affidavit that *all* the deeds examined by LMB personnel on file with the LMB, CENRO and the National Archives do not have the signature of the Secretary of the Interior or the Secretary of Agriculture and Natural Resources. *To repeat, former DENR Secretary Defensor states that upon examination, all deeds of conveyance involving friar lands did not have the signature of the Secretary*.

Hence, DENR Memorandum Order No. 16-05 was issued precisely to "remove doubts or dispel objections as to the validity of all Torrens transfer certificates of title issued over friar lands, where such doubts or objections arise either from the lack of signature of then Secretary of the Interior or the Secretary of Agriculture and Natural Resources on the deed of conveyance that have led to the issuance of said titles, or because of the loss or unavailability of such deeds or of the records from which the Secretary's signature or approval may be verified." **DENR Memorandum Order No. 16-05 was not limited to the Banilad Estate but applied to all friar lands in the Philippines because all deeds of conveyance, regardless of where located, did not have the signature of the Secretary.**

In the motion for reconsideration and subsequent manifestations they submitted, the Manotoks also submitted to the Court **some** of the Sale Certificates which similarly do not bear the signature of the Director of Lands or the Secretary of Interior. Thus:

1. Sales Certificates involving friar lands from **LMB records which do not bear the signatures of the Director of Lands and the Secretary of Interior**:

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[2] Emphasis supplied.

Sale Certificate No.	Name of Vendee	Estate/Province
909	Placido Mendoza	Lolomboy/Bulacan
1228	Mario Mateo	Lolomboy/Bulacan[3]

2. Sale Certificates involving friar lands obtained from the **National Archives which do not bear the signatures of the Director of Lands and the Secretary of Interior**:

Sale Certificate No.	Name of Vendee	Estate/Province
5411	[Illegible] Cruz	Lolomboy/Bulacan
5412	Pedro Cruz	Lolomboy/Bulacan
5413	[Illegible] Halili	Lolomboy/Bulacan
5414	Monica Urrutia	Lolomboy/Bulacan
5415	Emiliano Lorenzo	Lolomboy/Bulacan[4]

3. Sale Certificates from the **LMB and the National Archives that do not bear the signatures of both the Director of Lands and the Secretary of Agriculture and Natural Resources/Interior:**

Sale Certificate No.	Name of Vendee	Estate/Province
83	Juan J. Clemente	Tala/Rizal
52	Mariano de la Cruz	Tala/Rizal
144	Sotero Galgana	Piedad/Rizal
704	Ignacio Samson	Piedad/Rizal
1065	Felisa Santos de Guia	Piedad/Rizal
811	Pascual Mateo	Lolomboy/Bulacan
910	Placido Mendoza	Lolomboy/Bulacan
1723	Calixto Mendoza	Lolomboy/Bulacan
1724	Calixto Mendoza	Lolomboy/Bulacan

[3] Manifestation dated 5 November 2010.

[4] *Id.*

	Assignment dated 25 June 1912	-same-
	Assignment dated 10 November 1924	-same-
5310	Isabel Marquez	Lolomboy/Bulacan[5]

4. Sales Certificates to Friar Lands obtained from the **LMB that do do bear the signatures of both the Director of Lands and the Secretary of the Agriculture and Natural Resources/ Interior:**

Sale Cert. No.	Name of Vendee	Estate/Province
386	Enrique Matos	Piedad/Rizal
	Assignment dated 16 December 1914	-same-
4595	Matea Francisco	Lolomboy/Bulacan
	Assignment dated 1 August 1917	-same-
	Assignment dated 6 February 1920	-same-
	Assignment dated 1 November 1926	-same-
	Assignment dated 6 January 1931	-same-
387	Francisco Diaz	Lolomboy/Bulacan
908	Placido Mendoza	Lolomboy/Bulacan
1220	Maria del Castillo	Lolomboy/Bulacan[6]

5. Sale Certificates from the **LMB that do not bear the signatures of the Director of Lands and Secretary of Agriculture and Natural Resources/Interior:**

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[5] Manifestation dated 11 November 2010.

[6] Manifestation dated 26 November 2010.

Sale Certificate No.	Name of Vendee	Estate/Province
294	Arcadio Placido	Binagbag/Bulacan
324	Guillermo de la Cruz	Binagbag/Bulacan
333	Pablo Mamos	Binagbag/Bulacan
310	Agustin Placido	Binagbag/Bulacan
2492	Engracio Rojas	Toro-Lolomboy/Bulacan[7]

6. Sale Certificates and Assignments of Sale Certificates that **do not bear the signatures of the Director of Lands and Department Secretary:**

Sale Cert. No.	Name of Vendee	Estate/Province
636 (old)	Francisco Zacarias	Pasolo-Lolomboy
	Assignment dated January 6, 1933	-same-
186	Assignment dated December 29, 1919	Piedad/Rizal
284	Assignment dated December 29, 1919	Piedad/Rizal
5309	Celedonia Dilag	Lolomboy/Bulacan
3340	Felicidad M. De Bagtas	S.C. De Malabon/ Cavite[8]

7. Sales Certificates and Assigment of Sale Certificates that **do not bear the signatures of the Director of Lands and Department Secretary:**

Sale Cert. No.	Name of Vendee	Estate/Province
728	Assignment dated December 29, 1919	Naic/Cavite

[7] Supplemental Manifestation dated 16 December 2010.

[8] Supplemental Manifestation dated 14 January 2011.

1308	Assignment dated December 29, 1919	Malinta/Bulacan[9]

8. Deeds of Conveyance in the records of the **National Archives that bear the signature of the Director of Lands but not that of the Secretary of Interior**:

Deed of Conveyance No.	Name of Vendee	Estate/Province
5800	Gabriel Lazaro	Tala/Rizal
5865	The Roman Catholic Archbishop	Muntinlupa/Rizal
26345	Juan Arciaga Estole	Muntinlupa/Rizal
27648	Salud A. Yatco	Muntinlupa/Rizal
28779	Juan Claridad	Muntinlupa/Rizal
29164	Juliana Barizo	Imus/Cavite
29163	Rufina Jose	Imus/Cavite
29162	Luisa Sabater	Imus/Cavite
29161	Lina Octavo	Imus/Cavite
29212	Gregoria Alcantara	Imus/Cavite
29225	Alejandro Vasquez	Naic/Cavite
29226	Alejandra Merlan	Naic/Cavite
29227	Jovita Manalaysay	Naic/Cavite
29228	Alejandra Poblete	Naic/Cavite
29229	Marcela Garcia	Naic/Cavite
29230	Andres Fortuno	S.F. De Malabon/ Cavite
29180	Mariano Paradina	Biñan/Laguna
29179	Pascual Marquina	Biñan/Laguna
29178	Sps. Belisario	Biñan/Laguna

[9] Supplemental Manifestation dated 9 February 2011.

29177	Julio Casamata	Biñan/Laguna
29176	Sps. Belisario	Biñan/Laguna
29175	Macario Presbitero	Biñan/Laguna
29213	Felicidad Luzada	Malinta/Bulacan
19308	Agustin Placido	Binagbag/Bulacan
8906	Pablo Ramos	Binagbag/Bulacan
7616	Guillermo de la Cruz	Binagbag/Bulacan
29211	Adriano de Guzman	Binagbag/Bulacan
25110	Andres Avendaño	Lolomboy/Bulacan
34305	Francisco Mendoza	Lolomboy/Bulacan
34473	Antonio Mendoza, *et al.*	Lolomboy/Bulacan
34569	Clotilde Mendoza	Lolomboy/Bulacan
34374	Pedro Mendoza, *et al.*	Lolomboy/Bulacan
34484	Exequiel Mendoza	Lolomboy/Bulacan
34485	Matias Alberto	Lolomboy/Bulacan
29214	Apolonio Yamco	Lolomboy/Bulacan[10]

9. Deed of Conveyance from the **National Archives that bears the signature of the Director of Lands but not of the Secretary of Interior:**

Deed of Conveyance No.	Name of Vendee	Estate/Province
5867	The Roman Catholic Archbishop	Muntinlupa/Rizal[11]

[10] Manifestation dated 5 November 2010.

[11] Manifestation dated 11 November 2010.

10. Deeds of Conveyance that bear the signature of the Director of Lands but not the Department Secretary:

Deed of Conveyance No.	Name of Vendee	Estate/Province
5864	Filomena Yatco	Biñan/Laguna
5866	The Roman Catholic Archbishop	Muntinlupa/Rizal
5868	Faustino Arciaga	Muntinlupa/Rizal
5869	Faustino Arciaga	Muntinlupa/Rizal
5870	G. Chalmers	Muntinlupa/Rizal
5871	G. Chalmers	Muntinlupa/Rizal
5872	Juana Duque	Tala/Rizal
5873	Vicente Pascual	Tala/Rizal
5874	Primo Susano	Tala/Rizal
5875	Eustaquio Bordador	Tala/Rizal
5876	Gregorio Mauricio	Tala/Rizal
5883	Eusebio Evangelista	Tala/Rizal
5884	Anastasia Unabia	Talisay-Minglanilla/ Cebu
5885	Andres Velez	Talisay-Minglanilla/ Cebu
5886	Epifanio V. Cañares	Talisay-Minglanilla/ Cebu
5887	Lope Zafra	Talisay-Minglanilla/ Cebu
7140	Cornelio Lazaro	Piedad/Rizal
7141	Fabian Franco	Piedad/Rizal
7142	Manuel de Guia	Piedad/Rizal
7613	Evaristo de la Cruz	Binagbag/Bulacan
7614	Jose Illescas	Binagbag/Bulacan
7615	Doroteo Marcelo	Binagbag/Bulacan

7617	Cosme Filoteo	Binagbag/Bulacan
19307	Agustin Placido	Binagbag/Bulacan
19309	Petra Sombillo	Binagbag/Bulacan
19310	Emiterio S. Cruza	Binagbag/Bulacan
19311	Alfonso Marcelo	Binagbag/Bulacan
24865	Leoncio Seneca	S.C. DeMalabon/ Cavite
26341	Leoncio Lantaca	Calamba/Laguna
26342	Susana T. de Gana	Calamba/Laguna
26343	Vicente Q. Gana	Biñan/Laguna
26344	Vicente Q. Gana	Biñan/Laguna
26346	Juan Arciaga Estole	Muntinlupa/Rizal
27585	Maria Dias	Muntinlupa/Rizal
27646	Vicente Tensuan	Muntinlupa/Rizal
27647	Legal Heirs of Leoncia Gaurico	Muntinlupa/Rizal
27649	Mariano Gaurico	Muntinlupa/Rizal
27650	Esteban Aquino	S.C. DeMalabon/ Cavite
27721	Engracia Claudel, *et al.*	Muntinlupa/Rizal
27750	Bartola Ramos	S.M. De Pandi/ Bulacan
28511	Basilio Nifuente	Muntinlupa/Rizal
28780	Teodoro Almera, *et al.*	Santa Rosa/Laguna
28681	Francisco Rubio	Banilad/Cebu
28682	Felipa del Mar	Banilad/Cebu
28683	Ines Jose	Imus/Cavite
28774	Benita Disonglo	Biñan/Laguna

28891	Rufina de Mesa, *et al.*	Muntinlupa/Rizal
34306	Luis Fernando	Lolomboy/Bulacan
34307	Dionisio Villanueva	Lolomboy/Bulacan
34308	Legal Heirs of Anacleta Zambra	Sta. Rosa/Laguna
34309	Legal Heirs of Franciso Arambulo	Sta. Rosa/Laguna
34372	Miguel Lim-Aco	Biñan/Laguna
34373	Miguel Lim-Aco	Biñan/Laguna
34375	Candido Bintol	Naic/Cavite
34376	Luis dela Cruz	S.M. de Pandi/ Bulacan
34471	P.A. Roldan, *et al.*	Isabela
34472	Oliva Manela	Imus/Cavite
34486	Legal Heirs of Justo Herrera	Lolomboy/Bulacan
34487	Gonzalo P. Dane	Lolomboy/Bulacan
34488	Ambrocio Trinidad	Lolomboy/Bulacan
34565	Diego Bartolome, *et al.*	Lolomboy/Bulacan
34567	Juana Lorenzo	Lolomboy/Bulacan
34568	Marcelino de Jesus	Lolomboy/Bulacan
34645	Maxima Garcia	Muntinlupa/Rizal[12]

11. Deeds of Conveyance that bear the signature of the Director of Lands but not the Department Secretary:

Deed of Conveyance No.	Name of Vendee	Estate/Province
7143	Jose de la Cruz	Piedad Estate/Rizal

[12] Supplemental Manifestation dated 14 January 2011.

23407	Marcelino Salcedo	Naic/Cavite
23408	Juan de Ocampo	S.C. de Malabon/ Cavite
24862	Buenaventura Alarca	S.C. de Malabon/ Cavite
24863	Rufino P. Garcia	S.C. de Malabon/ Cavite
24864	Santiago Resus	S.C. de Malabon/ Cavite
27748	Nemecio Principe	S.M. de Pandi/ Bulacan
28775	Leon Guico	Biñan/Laguna
28776	Guido Yaptinchay	Biñan/Laguna
28777	Diego Alunas	Biñan/Cavite
28778	Lazaro Gonzales	Biñan/Laguna
29165	Maximiana Monzon	Imus/Cavite
34566	Juana Lorenzo	Lolomboy/Bulacan
5882	Gabriel Lazaro	Tala/Rizal[13]

These are only **some** of the titles that could also be declared void under the majority decision. **The Manotoks are still examining the other records of the LMB and the National Archives**.

The total area of friar lands in NCR, specifically in Muntinlupa, Piedad, San Francisco de Malabon, Santa Cruz de Malabon, and Tala is 86,567.50 acres or 35,032.624 hectares. For comparison, Makati City has an area of 2,736 hectares,[14] and the entire Metro Manila has an area of 63,600 hectares.[15] **Thus, in terms of area, the former friar lands in Metro Manila**

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[13] Supplemental Manifestation dated 9 February 2011.

[14] http://www.makati.gov.ph/portal/index.jsp (Accessed on 19 July 2011).

[15] *Id*.

comprise more than one-half of Metro Manila. If we do not apply DENR Memorandum Order No. 16-05 to these areas, the Court will be disquieting titles held by generations of landowners since the passage in 1904 of Act No. 1120. Hundreds of thousands, if not millions, of landowners would surely be dispossessed of their lands in these areas. This is a disaster waiting to happen – a blow to the integrity of our Torrens system and the stability of land titles in this country.

The majority stated that subsequent to the promulgation of the Court decision in *Alonso v. Cebu Country Club, Inc.*,[16] Congress passed Republic Act No. 9443 "confirming and declaring, subject to certain exceptions, the validity of existing TCTs and reconstituted certificates of title covering the Banilad Friar Lands Estate situated in Cebu." The majority added that "[t]he enactment of RA 9443 signifies the Legislature's recognition of the statutory basis of the *Alonso* ruling to the effect that in the absence of signature and/or approval of the Secretary of Interior/Natural Resources in the Certificates of Sale on file with the CENRO, the sale is not valid and the purchaser has not acquired ownership of the friar lands."

While RA 9443 refers only to the Banilad Estate, to limit its application solely to the Banilad Estate will result in class legislation. RA 9443 should be extended to lands similarly situated; otherwise, there will be violation of the equal protection clause of the Constitution. In *Central Bank Employees Assoc., Inc. v. Bangko Sentral ng Pilipinas*,[17] the Court ruled that the grant of a privilege to rank-and-file employees of seven government financial institutions and its denial to BSP rank-and-file employees breached the latter's right to equal protection. In that case, the Court sated that "*[a]likes are being treated as unalikes without any rational basis.*"[18] That is the situation in the present case if RA 9443 will apply only to the Banilad

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[16] Resolution, 462 Phil. 546 (2003).

[17] 487 Phil. 531 (2004).

[18] Italicization in the original.

Estate. There is no substantial distinction between the lands in the Banilad Estate and the other friar lands all over the country except for their location. The Court further stated in the *BSP* case:

> [I]t must be emphasized that the equal protection clause does not demand absolute equality *but it requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced.* Favoritism and undue preference cannot be allowed. For the principle is that equal protection and security shall be given to every person under circumstances which, if not identical, are analogous. If law be looked upon in terms of burden or charges, those that fall within a class should be treated in the same fashion; whatever restrictions cast on some in the group is equally binding on the rest.[19]

Since the lack of signatures and absence of approval by the Secretary of Interior/Agriculture and the Director of Lands were cured with the passage of RA 9443, the benefits of the law should also apply to other **lands similarly situated**.

Significantly, in BSP, the Court did not annul the provisions in the charters of Land Bank of the Philippines, Development Bank of the Philippines, Social Security System, and Government Service Insurance System, Home Guaranty Corporation and Small Business Guarantee, Finance Corporation, and Philippine Deposit Insurance Corporation exempting their employees from the Salary Standardization Law but extended the same exemption to the Bangko Sentral employees to place them in equal footing with employees of other government financial institutions even if they did not question the law. In the present case, the Court should similarly extend the benefits of RA 9443 to all conveyances of friar lands all over the country.

In denying the motion for reconsideration filed by the Manotoks, the majority also maintain that the existence of Sale Certificate No. 1054 in the records of the DENR-LMB was not duly established.

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[19] *Id.* at 583. Italicization in the original.

It is unfortunate that the LMB no longer has a copy of the original Sale Certificate No. 1054, dated 10 March 1919, in the names of Regina Geronimo, Modesto Zacarias and Felicisimo Villanueva, the original grantees. However, the Manotoks presented **three incontrovertible documents to establish the existence of Sale Certificate No. 1054**. *First*, the original Assignment of Sale Certificate No. 1054 dated 11 March 1919 between Regina Geronimo, Zacarias Modesto and Felicisimo Villanueva as assignors and Zacarias Modesto as assignee, which is **on file with the LMB**,[20] **showing that the Assignment was approved by the Director of Lands on 22 March 1919**;[21] *second*, a copy of the Assignment of Sale Certificate No. 1054 dated 7 June 1920 between Zacarias Modesto as assignor and Severino Manotok and M. Teodoro as assignees which **is on file with the National Archives**;[22] and *third*, the **original** of the Assignment of Sale Certificate No. 1054 dated 4 May 1923 between M. Teodoro and Severino Manotok as assignors and Severino Manotok as assignee[23] and approved by the Acting Director of Lands on 23 June 1923, which is **on file with the LMB**.[24] The existence of Assignment of Sale Certificate No. 1054 dated 4 May 1923 on file with the LMB was **confirmed by Atty. Fe T. Tuanda, OIC of the LMB Records Management Division, in a letter dated 1 December 2009**.[25]

The majority assert that the dissent suggests that Memorandum Order No. 16-05 "would apply even to those deeds of conveyance *not* found in the records of DENR or its field offices, such as the Manotoks' Deed of Conveyance No. 29204 sourced from the National Archives. It would then cover cases of claimants who have not been issued any certificate of sale but were able to produce a deed of conveyance in their names."

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[20] CA *rollo*, Vol. 11, p. 7226.

[21] *Id.* at 7227.

[22] CA *rollo*, Vol. 12, p. 8590.

[23] CA *rollo*, Vol. 11, p. 7230.

[24] *Id.* at 7231.

[25] *Id.* at 7224.

The majority mistakenly denigrate the records of the National Archives. **It cannot be disputed that the National Archives is the official repository of government and public documents**. Republic Act No. 9470 (RA 9470),[26] which seeks to strengthen and establish the National Archives of the Philippines, covers "all public records with archival value, held by either government offices or private collections, and shall also cover archival and records management programs and activities in all branches of government, whether national or local, constitutional offices, GOCCs, government financial institutions, state universities and colleges, Philippine embassies, consulate and other Philippine offices abroad." RA 9470 mandates the National Archives to "[a]ccept, store, preserve and conserve any public archive transferred to the National Archives."[27] RA 9470 also mandates the National Archives to "[o]btain, recover, transfer and have custody and management of all the public archives not in the custody of the National Archives."[28] Section 6(8) of RA 9470 specifies, as one of the functions of the National Archives, that it shall "[i]ssue, transmit and authenticate reproduced copies, certified true copies or certifications on public archives and for extracts thereof."

Jurisprudence is replete with cases showing that the Court gives great weight to the presence or absence of documents in the National Archives. In *Department of Education, Culture & Sports v. Del Rosario*,[29] the Court held that petitioner failed to prove the due execution or existence of the Deed of Donation because there was no evidence that petitioner looked for a copy of the Deed of Donation from the Clerk of Court concerned or from the National Archives. In *Fernandez v. Fernandez*,[30] the Court ruled that filiation was not proved citing a certification

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[26] National Archives of the Philippines Act of 2007. Dated 21 May 2007.

[27] Section 6 (11).

[28] Section 6 (10).

[29] 490 Phil. 193 (2005).

[30] 416 Phil. 322 (2001).

from the Records Management and Archives Office of the non-availability of information about petitioner's birth certificate because the Register of Births was not on file with the National Archives. In *Heirs of Dela Cruz v. CA*,[31] the Court rejected the claim that copies of a deed of sale were lost or could not be found in the National Archives due to lack of certification from the said office. In *Premier Development Bank v. Court of Appeals*,[32] the Court cited the trial court's finding based on a certification from the Bureau of National Archives that there was no notarial records of Atty. Armando Pulgado in Manila. **In short, the Court recognizes that documents from the National Archives have the same evidentiary value as public documents from government offices which, after all, are the source of the archived documents**.

The records of the National Archives on the existence of Sale Certificate No. 1054 are supported and confirmed by the records of the LMB. **The LMB has on its file the original of Assignment of Sale Certificate No. 1054 dated 4 May 1923** between M. Teodoro and Severino Manotok as assignors and Severino Manotok as assignee and approved on 23 June 1923 by the Acting Director of Lands.[33] The LMB has also on its file the other documents mentioned above that prove the existence of the succeeding Certificates of Sale except that the Certificate of Sale to the original assignors is not on file with the LMB for reasons that could not be attributed to the Manotoks' fault.

In addition, the Manotoks were able to present **certified true copies of the following:** (1) the Deed of Conveyance No. 29204 secured from the National Archives which is the repository of government and official documents; (2) the original of Official Receipt No. 675257 dated 20 February 1929[34] issued by the Special Collecting Office/Friar Lands Agent to Severino Manotok

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[31] 358 Phil. 652 (1998).

[32] 493 Phil. 752 (2005).

[33] CA *rollo*, Vol. 11, p. 7231.

[34] CA *rollo*, Vol. 7, p. 3150.

"For certified copy of Assignment of C.S. No. 1054 for lot no. 823;" and (3) the original of the Provincial Assessor's declaration of title in Severino Manotok's name for tax purposes on 9 August 1933[35] assessing Severino Manotok beginning with the year 1933.

Contrary to the majority opinion, the Manotoks' incontrovertible proof of existence of the three Assignments of Sale Certificate, as well as the existence of the other supporting documents, **clearly and convincingly establishes beyond any doubt the existence of Sale Certificate No. 1054.**

I further reiterate that it is the Deed of Conveyance that must bear the signature of the Secretary of Interior/Agriculture because it is only when the final installment is paid that the Secretary can approve the sale, the purchase price having been fully paid. Under Section 18 of Act No. 1120,[36] any sale of friar land by the Chief of the Bureau of Public Lands (now Director of Lands) shall not be valid until approved by the Secretary. This means that the Secretary, under Section 18, approves the sale and thus signs the Deed of Conveyance upon full payment of the purchase price. However, under Section 12 of Act No. 1120, only the Director of Lands signs the Sales Certificate upon payment of the first installment.[37] Section 12 of Act No. 1120 provides:

Section 12. It shall be the duty of the Chief of the Bureau of Public Lands by proper investigation to ascertain what is the actual value of the parcel of land held by each settler and occupant, taking into consideration the location and quality of each holding of land, and any other circumstances giving its value. The basis of valuation shall likewise be, so far as practicable, such that the aggregate of the values of all the holdings included in each particular tract shall be equal to the cost to the Government to the entire tract, including

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[35] *Id.* at 3191.

[36] Friar Lands Act. Section 18 provides: "No lease or sale made by Chief of the Bureau of Public Lands under the provisions of this Act shall be valid until approved by the Secretary of the Interior."

[37] See *Dela Torre v. Court of Appeals*, 381 Phil. 819 (2000).

the cost of surveys, administration and interest upon the purchase money to the time of sale. **When the cost thereof shall have been thus ascertained, *the Chief of the Bureau of Public Lands shall give the said settler and occupant a certificate* which shall set forth in detail that the Government has agreed to sell to such settler and occupant the amount of land so held by him, at the price so fixed, payable as provided in this Act at the office of the Chief of Bureau of Public Lands, in gold coin of the United States or its equivalent in Philippine currency, and that upon the payment of the final installment together with all accrued interest the Government will convey to such settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act.** The Chief of the Bureau of Public Lands shall, in each instance where a certificate is given to the settler and occupant of any holding, take his formal receipt showing the delivery of such certificate, signed by said settler and occupant.[38] (Boldfacing and italicization supplied)

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[38] Section 122 of the Land Registration Act provides:

Sec. 122. Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate as a contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the lands, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate and owner's duplicate such land shall be registered land for all purposes under this Act.

Under Section 12, it is only the Director of Lands who signs the Sales Certificate. The Sales Certificate operates as a contract to sell which, under the law, the Director of Lands is authorized to sign and thus bind the Government as seller of the friar land. This transaction is a sale of private property because friar lands are patrimonial properties of the Government.[39] The law expressly authorizes the Director of Lands to sell private or patrimonial property of the Government under a contract to sell. Under Section 18, the Secretary signs the Deed of Conveyance because the Secretary must verify if full payment has been made, and if so, must approve the sale initially made by the Director of Lands. The Deed of Conveyance operates as a deed of absolute sale which the Secretary signs upon full payment of the purchase price. The Deed of Conveyance, when presented, is authority for the Register of Deeds to issue a new title to the buyer as provided in Section 122 of the Land Registration Act.

The majority insist that where there is no certificate of sale issued, the purchaser does not acquire any right of possession and purchase.

Section 12 of Act No. 1120 provided that "upon payment of the last installment together with all accrued interest[,], the Government will convey to [the] settler and occupant the said land so held by him by proper instrument of conveyance, which shall be issued and become effective in the manner provided in section one hundred and twenty-two of the Land Registration Act." **The Manotoks paid the full purchase price to the Government on 7 December 1932. Deed of Conveyance No. 29204, dated 7 December 1932, on its face acknowledged receipt by the Government of the amount of ₱2,362 in consideration for Lot 823 granted and conveyed to Severino Manotok.**[40] Thus, the Manotoks had already acquired ownership of Lot 823. The only resolutory condition, which is the non-

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[39] *Alonso v. Cebu Country Club, Inc.*, *supra* note 16, citing *Jacinto v. Director of Lands,* 49 Phil. 853 (1926).

[40] CA *rollo*, Vol. 7, p. 3489.

payment of the full purchase price[41] which results in the cancellation of the contract to sell, can no longer happen because the full purchase price had already been paid. Once it is shown that the full purchase price had been paid, the issuance of the proper certificate of conveyance necessarily follows. There is nothing more that is required to be done as the title already passes to the purchaser.

The majority cite the ruling in *Alonso*[42] that approval by the Secretary of Agriculture and Commerce of the sale of friar lands is indispensable for its validity. However, DENR Memorandum Order No. 16-05 superseded the *Alonso* ruling. DENR Memorandum Order No. 16-05 declared that "all Deeds of Conveyance that do not bear the signature of the Secretary are deemed signed or otherwise ratified by this Memorandum Order provided, however, that full payment of the purchase price of the land and compliance with all the other requirements for the issuance of the Deed of Conveyance under Act 1120 have been accomplished by the applicant[.]" DENR Memorandum Order No. 16-05 acknowledges that "it is only a ministerial duty on the part of the Secretary to sign the Deed of Conveyance once the applicant had already made full payment of the purchase price of the land."

The majority in their *Reply to the Dissenting Opinion* expressly admit that Memorandum Order No. 16-05 —

> x x x correctly stated that it is only a ministerial duty on the part of the Secretary to sign the Deed of Conveyance once the applicant had made full payment on the purchase price of the land. *Jurisprudence teaches us that notwithstanding the failure of the government to issue the proper instrument of conveyance when the purchaser finally pays the final installment of the purchase price, the purchaser of friar land still acquired ownership over the subject land.* (Italicization supplied)

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[41] *Dela Torre v. Court of Appeals, supra* note 37.

[42] *Supra* note 16.

The majority expressly admit that it is the ministerial duty of the Secretary to sign the Deed of Conveyance once the purchaser of the friar land pays in full the purchase price. This is the situation of the Manotoks. The majority also expressly admit that upon such full payment the purchaser acquires ownership of the land "notwithstanding the failure" of the Secretary to sign the Deed of Conveyance. Since the majority expressly admit that upon full payment of the purchase price it becomes the ministerial duty of the Secretary to approve the sale, then the majority must also necessarily admit that the approval by the Secretary is a mere formality that has been complied with by the issuance of Memorandum Order No. 16-05. **Since the majority further expressly admit that upon full payment of the purchase price ownership of the friar land passes to the purchaser, despite the failure of the Secretary to sign the Deed of Conveyance, then the majority must also necessarily admit that the Manotoks became the absolute owners of the land upon their full payment of the purchase price on 7 December 1932**.

The majority states that it is the primary duty of the Chief of the Bureau of Public Lands to record all deeds and instruments in a sales registry books which shall be retained in the Bureau of Public Lands. However, the LMB could no longer produce the sales registry book because it was no longer with the Records Management Division of the LMB. The majority states:

> It is thus the primary duty of the Chief of the Bureau of Public Lands to record all these deeds and instruments in sales registry books which shall be retained in the Bureau of Public Lands. Unfortunately, the LMB failed to produce the sales registry book in court, which could have clearly shown the names of the claimants, the particular lots and areas applied for, the sale certificates issued and other pertinent information on the sale of friar lands within the Piedad Estate. Witness Teresita J. Reyes, a retired Assistant Chief of the Records Management Division (RMD), LMB who was presented by the Manahans, testified that when the LMB was decentralized, the sales registry books pertaining to friar lands were supposedly turned over to the regional offices. These consisted of copies of the appropriate pages of the sales registry books in the LMB RMD

main office which has an inventory of lots subject of deeds of conveyance and sales certificates. However, Reyes said that the sales registry book itself is no longer with the RMD. On the other hand, the alleged affidavit of Secretary Defensor dated November 11, 2010 states that MO 16-05 was intended to address situations when deeds of conveyance lack the signature of the Secretary of Agriculture and Commerce or such deed or records – from which the Secretary's signature or approval may be verified – were lost or unavailable.

Whether the friar lands registry book is still available in the LMB or properly turned over to the regional offices remains unclear. With the statutorily prescribed record-keeping of sales of friar lands apparently in disarray, it behooves on the courts to be more judicious in settling conflicting claims over friar lands. Titles with serious flaws must still be carefully scrutinized in each case. Thus, we find that the approach in *Alonso* remains as the more rational and prudent course than the wholesale ratification introduced by MO 16-05.

I reiterate that the Manotoks should not be punished if the documents leading to the issuance of TCT No. 22813 could no longer be found in the files of the government office, considering that these were pre-war documents and considering further the lack of proper preservation of documents in some government offices. The Certificate of Sale to the original assignors is not on file with the LMB for reasons that could not be attributed to the Manotoks' fault. While the Court must exercise prudence in settling claims over friar lands, it should not set aside documents which establish the existence of Sale Certificate No. 1054 considering that these documents were sourced from the National Archives and, as earlier stated, these documents have the same evidentiary value as public documents from government offices. Again, more than half of Metro Manila used to be part of friar lands. If the torrens titles to these former friar lands are declared void because their current owners could not present the original certificates of sale, or because the original certificates of sale or deeds of conveyance do not bear the signature of the Secretary, then hundreds of thousands, if not millions, of landowners would be rendered homeless or propertyless by the majority decision.

Further, the Court could not insist on the presentation of the original sale certificate from the Manotoks. The safekeeping of the original sale certificates is the responsibility of the government. It is only optional for the landowners to keep them. How many landowners can present copies of their original sale certificates? These landowners should not be blamed if the government fails to properly preserve these documents. As long as landowners can show other evidence to prove their ownership, they should not be dispossessed of their titles. Here, the Manotoks were able to present copies of the Assignments of Sale Certificate No. 1054, which are government-issued documents, from the records of the National Archives and the LMB itself. There would be nothing to assign if the original Sale Certificate No. 1054 was not conveyed by the government to the original assignors. The Manotoks were able to prove full payment of the purchase price and they thus acquired full ownership of Lot No. 823 from the time of full payment. Deed of Conveyance No. 29204 on its face acknowledges this. The title to Lot No. 823 already passed to the Manotoks who became the absolute owners of the land on 7 December 1932, the date the Manotoks fully paid Lot No. 823.

Accordingly, I vote to **GRANT** the motion for reconsideration of the Manotoks, sustain the validity of Deed of Conveyance No. 29204, and **DECLARE** the Manotoks' title, namely TCT No. RT-22481 (372302), **VALID**.

EN BANC

[G.R. No. 179652. March 6, 2012]

PEOPLE'S BROADCASTING SERVICE (BOMBO RADYO PHILS., INC.), *petitioner, vs.* **THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, THE REGIONAL DIRECTOR, DOLE REGION VII, and JANDELEON JUEZAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE); VISITORIAL AND ENFORCEMENT POWER; AN EMPLOYER-EMPLOYEE RELATIONSHIP MUST EXIST FOR THE EXERCISE OF THE VISITORIAL AND ENFORCEMENT POWER.— It is apparent that there is a need to delineate the jurisdiction of the DOLE Secretary *vis-à-vis* that of the NLRC. Under Art. 129 of the Labor Code, the power of the DOLE and its duly authorized hearing officers to hear and decide any matter involving the recovery of wages and other monetary claims and benefits was qualified by the proviso that the complaint not include a claim for reinstatement, or that the aggregate money claims not exceed PhP 5,000. RA 7730, or an *Act Further Strengthening the Visitorial and Enforcement Powers of the Secretary of Labor*, did away with the PhP 5,000 limitation, allowing the DOLE Secretary to exercise its visitorial and enforcement power for claims beyond PhP 5,000. The only qualification to this expanded power of the DOLE was only that there still be an existing employer-employee relationship. It is conceded that if there is no employer-employee relationship, whether it has been terminated or it has not existed from the start, the DOLE has no jurisdiction. Under Art. 128(b) of the Labor Code, as amended by RA 7730, the first sentence reads, "Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders

to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection." It is clear and beyond debate that an employer-employee relationship must exist for the exercise of the visitorial and enforcement power of the DOLE.

2. ID.; ID.; ID.; ID.; THE DOLE MUST HAVE THE POWER TO DETERMINE WHETHER OR NOT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS, AND FROM THERE TO DECIDE WHETHER OR NOT TO ISSUE COMPLIANCE ORDERS IN ACCORDANCE WITH ARTICLE 128(b) OF THE LABOR CODE, AS AMENDED BY RA 7730.— No limitation in the law was placed upon the power of the DOLE to determine the existence of an employer-employee relationship. No procedure was laid down where the DOLE would only make a preliminary finding, that the power was primarily held by the NLRC. The law did not say that the DOLE would first seek the NLRC's determination of the existence of an employer-employee relationship, or that should the existence of the employer-employee relationship be disputed, the DOLE would refer the matter to the NLRC. The DOLE must have the power to determine whether or not an employer-employee relationship exists, and from there to decide whether or not to issue compliance orders in accordance with Art. 128(b) of the Labor Code, as amended by RA 7730.

3. ID.; ID.; ID.; ID.; GUIDELINES IN DETERMINING THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP.— The DOLE, in determining the existence of an employer-employee relationship, has a ready set of guidelines to follow, the same guide the courts themselves use. The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employer's power to control the employee's conduct. The use of this test is not solely limited to the NLRC. The DOLE Secretary, or his or her representatives, can utilize the same test, even in the course of inspection, making use of the same evidence that would have been presented before the NLRC.

4. ID.; ID.; ID.; ID.; THE DETERMINATION OF THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BY THE DOLE MUST BE RESPECTED.— The determination of the existence of an employer-employee relationship by the DOLE must be respected. The expanded visitorial and enforcement power of the DOLE granted by RA 7730 would be rendered nugatory if the alleged employer could, by the simple expedient of disputing the employer-employee relationship, force the referral of the matter to the NLRC. The Court issued the declaration that at least a *prima facie* showing of the absence of an employer-employee relationship be made to oust the DOLE of jurisdiction. But it is precisely the DOLE that will be faced with that evidence, and it is the DOLE that will weigh it, to see if the same does successfully refute the existence of an employer-employee relationship. If the DOLE makes a finding that there is an existing employer-employee relationship, it takes cognizance of the matter, to the exclusion of the NLRC. The DOLE would have no jurisdiction only if the employer-employee relationship has already been terminated, or it appears, upon review, that no employer-employee relationship existed in the first place.

5. ID.; ID.; ID.; ID.; THE DETERMINATION OF THE DOLE AS TO THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP IN THE EXERCISE OF ITS VISITORIAL AND ENFORCEMENT POWER IS SUBJECT TO JUDICIAL REVIEW AND NOT REVIEW BY THE NATIONAL LABOR RELATIONS COMMISSION (NLRC).— The Court, in limiting the power of the DOLE, gave the rationale that such limitation would eliminate the prospect of competing conclusions between the DOLE and the NLRC. The prospect of competing conclusions could just as well have been eliminated by according respect to the DOLE findings, to the exclusion of the NLRC, and this We believe is the more prudent course of action to take. This is not to say that the determination by the DOLE is beyond question or review. Suffice it to say, there are judicial remedies such as a petition for *certiorari* under Rule 65 that may be availed of, should a party wish to dispute the findings of the DOLE. It must also be remembered that the power of the DOLE to determine the existence of an employer-employee relationship need not necessarily result in an affirmative finding. The DOLE may

well make the determination that no employer-employee relationship exists, thus divesting itself of jurisdiction over the case. It must not be precluded from being able to reach its own conclusions, not by the parties, and certainly not by this Court. Under Art. 128(b) of the Labor Code, as amended by RA 7730, the DOLE is fully empowered to make a determination as to the existence of an employer-employee relationship in the exercise of its visitorial and enforcement power, subject to judicial review, not review by the NLRC.

6. ID.; ID.; ID.; ID.; THE INITIATION OF A CASE THROUGH A COMPLAINT DOES NOT DIVEST THE DOLE SECRETARY OR HIS DULY AUTHORIZED REPRESENTATIVE OF JURISDICTION UNDER ARTICLE 128 (b) OF THE LABOR CODE.— There is a view that despite Art. 128(b) of the Labor Code, as amended by RA 7730, there is still a threshold amount set by Arts. 129 and 217 of the Labor Code when money claims are involved, *i.e.*, that if it is for PhP 5,000 and below, the jurisdiction is with the regional director of the DOLE, under Art. 129, and if the amount involved exceeds PhP 5,000, the jurisdiction is with the labor arbiter, under Art. 217. The view states that despite the wording of Art. 128(b), this would only apply in the course of regular inspections undertaken by the DOLE, as differentiated from cases under Arts. 129 and 217, which originate from complaints. There are several cases, however, where the Court has ruled that Art. 128(b) has been amended to expand the powers of the DOLE Secretary and his duly authorized representatives by RA 7730. In these cases, the Court resolved that the DOLE had the jurisdiction, despite the amount of the money claims involved. Furthermore, in these cases, the inspection held by the DOLE regional director was prompted specifically by a complaint. Therefore, the initiation of a case through a complaint does not divest the DOLE Secretary or his duly authorized representative of jurisdiction under Art. 128(b).

7. ID.; ID.; ID.; ID.; THE DOLE HAS NO JURISDICTION OVER THE PRESENT CASE; THE FINDINGS OF THE REGIONAL DIRECTOR WERE NOT BASED ON SUBSTANTIAL EVIDENCE AND PRIVATE RESPONDENT FAILED TO PROVE THE EXISTENCE OF AN

EMPLOYER-EMPLOYEE RELATIONSHIP.— The finding of the DOLE Regional Director that there was an employer-employee relationship has been subjected to review by this Court, with the finding being that there was no employer-employee relationship between petitioner and private respondent, based on the evidence presented. Private respondent presented self-serving allegations as well as self-defeating evidence. The findings of the Regional Director were not based on substantial evidence, and private respondent failed to prove the existence of an employer-employee relationship. The DOLE had no jurisdiction over the case, as there was no employer-employee relationship present. Thus, the dismissal of the complaint against petitioner is proper.

BRION, *J., concurring opinion (in the Result):*

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE); VISITORIAL AND ENFORCEMENT POWER; THE POWER TO DETERMINE THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BY THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) IN THE EXERCISE OF ITS VISITORIAL AND ENFORCEMENT POWER IS NOW RECOGNIZED.— The **present Resolution now recognizes that the determination of the existence of an employer-employee relationship by the DOLE, in the exercise of its visitorial and enforcement power under Article 128(b) of the Labor Code, is entitled to full respect and must be fully supported. x x x The Court now recognizes that the DOLE has the full power to determine the existence of an employer-employee relationship in cases brought to it under Article 128(b) of the Labor Code. This power is parallel and not subordinate to that of the NLRC**. Our present ruling on the authority of the DOLE with respect to Article 128(b) of the Labor Code is, to my mind, a very positive development that cannot but benefit our working masses, the vast majority of whom "are not organized and, therefore, outside the protective mantle of collective bargaining." It should be welcome to the DOLE, too, as it will greatly boost its visitorial and enforcement power, and serve as an invaluable tool in its quest to ensure that workers enjoy minimum terms and conditions of employment.

The DOLE's labor inspection program can now proceed without being sidetracked by unscrupulous employers who could, as the Resolution acknowledges, render nugatory the "expanded visitorial and enforcement power of the DOLE granted by RA 7730 xxx by the simple expedient of disputing the employer-employee relationship [and] force the referral of the matter to the NLRC."

2. ID.; ID.; ID.; ID.; JUSTICE BRION DOES NOT SUBSCRIBE TO THE MAJORITY OPINION THAT A DEED OF ASSIGNMENT OF BANK DEPOSITS CAN BE A SUBSTITUTE FOR A CASH OR SURETY BOND IN PERFECTING AN APPEAL TO THE SECRETARY OF LABOR.— But our Resolution does not fully go the DOLE's way. The Court, at the same time, confirms its previous finding that no employer-employee relationship exists between Juezan and Bombo Radyo based on the evidence presented, and that a Deed of Assignment of Bank Deposits can be a substitute for a cash or surety bond in perfecting an appeal to the Labor Secretary. I continue to entertain strong reservations against the validity of these rulings, particularly the ruling on the Court's acceptance of a Deed of Assignment of Bank Deposits to perfect an appeal to the Labor Secretary; this mode directly contravenes the express terms of Article 128(b) of the Labor Code which requires **only** a cash or surety bond. **I do hope that the Court will consider this ruling an isolated one applicable only to the strict facts obtaining in the present case as this is** a step backward in the DOLE's bid for an orderly and efficient delivery of labor justice.

APPEARANCES OF COUNSEL

Mae M. Gellecanao-Laserna for petitioner.
Public Attorney's Office for private respondent.

R E S O L U T I O N

VELASCO, JR., *J.*:

In a Petition for *Certiorari* under Rule 65, petitioner People's Broadcasting Service, Inc. (Bombo Radyo Phils., Inc.) questioned the Decision and Resolution of the Court of Appeals (CA) dated

October 26, 2006 and June 26, 2007, respectively, in C.A. G.R. CEB-SP No. 00855.

Private respondent Jandeleon Juezan filed a complaint against petitioner with the Department of Labor and Employment (DOLE) Regional Office No. VII, Cebu City, for illegal deduction, nonpayment of service incentive leave, 13th month pay, premium pay for holiday and rest day and illegal diminution of benefits, delayed payment of wages and noncoverage of SSS, PAG-IBIG and Philhealth.[1] After the conduct of summary investigations, and after the parties submitted their position papers, the DOLE Regional Director found that private respondent was an employee of petitioner, and was entitled to his money claims.[2] Petitioner sought reconsideration of the Director's Order, but failed. The Acting DOLE Secretary dismissed petitioner's appeal on the ground that petitioner submitted a Deed of Assignment of Bank Deposit instead of posting a cash or surety bond. When the matter was brought before the CA, where petitioner claimed that it had been denied due process, it was held that petitioner was accorded due process as it had been given the opportunity to be heard, and that the DOLE Secretary had jurisdiction over the matter, as the jurisdictional limitation imposed by Article 129 of the Labor Code on the power of the DOLE Secretary under Art. 128(b) of the Code had been repealed by Republic Act No. (RA) 7730.[3]

In the Decision of this Court, the CA Decision was reversed and set aside, and the complaint against petitioner was dismissed. The dispositive portion of the Decision reads as follows:

WHEREFORE, the petition is **GRANTED**. The Decision dated 26 October 2006 and the Resolution dated 26 June 2007 of the Court of Appeals in C.A. G.R. CEB-SP No. 00855 are **REVERSED** and **SET ASIDE.** The Order of the then Acting Secretary of the

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[1] *People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment*, G.R. No. 179652, May 8, 2009, 587 SCRA 724, 738.

[2] *Id.* at 739.

[3] *Id.* at 740.

Department of Labor and Employment dated 27 January 2005 denying petitioner's appeal, and the Orders of the Director, DOLE Regional Office No. VII, dated 24 May 2004 and 27 February 2004, respectively, are **ANNULLED.** The complaint against petitioner is **DISMISSED**.[4]

The Court found that there was no employer-employee relationship between petitioner and private respondent. It was held that while the DOLE may make a determination of the existence of an employer-employee relationship, this function could not be co-extensive with the visitorial and enforcement power provided in Art. 128(b) of the Labor Code, as amended by RA 7730. The National Labor Relations Commission (NLRC) was held to be the primary agency in determining the existence of an employer-employee relationship. This was the interpretation of the Court of the clause "in cases where the relationship of employer-employee still exists" in Art. 128(b).[5]

From this Decision, the Public Attorney's Office (PAO) filed a Motion for Clarification of Decision (with Leave of Court). The PAO sought to clarify as to when the visitorial and enforcement power of the DOLE be not considered as co-extensive with the power to determine the existence of an employer-employee relationship.[6] In its Comment,[7] the DOLE sought clarification as well, as to the extent of its visitorial and enforcement power under the Labor Code, as amended.

The Court treated the Motion for Clarification as a second motion for reconsideration, granting said motion and reinstating the petition.[8] It is apparent that there is a need to delineate the jurisdiction of the DOLE Secretary *vis-à-vis* that of the NLRC.

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[4] *Id.* at 763.

[5] *Id.* at 744-745.

[6] *Rollo*, p. 329.

[7] *Id.* at 335.

[8] Resolution, *People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment,* G.R. No. 179652, January 24, 2011.

Under Art. 129 of the Labor Code, the power of the DOLE and its duly authorized hearing officers to hear and decide any matter involving the recovery of wages and other monetary claims and benefits was qualified by the proviso that the complaint not include a claim for reinstatement, or that the aggregate money claims not exceed PhP 5,000. RA 7730, or an *Act Further Strengthening the Visitorial and Enforcement Powers of the Secretary of Labor*, did away with the PhP 5,000 limitation, allowing the DOLE Secretary to exercise its visitorial and enforcement power for claims beyond PhP 5,000. The only qualification to this expanded power of the DOLE was only that there still be an existing employer-employee relationship.

It is conceded that if there is no employer-employee relationship, whether it has been terminated or it has not existed from the start, the DOLE has no jurisdiction. Under Art. 128(b) of the Labor Code, as amended by RA 7730, the first sentence reads, "Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection." It is clear and beyond debate that an employer-employee relationship must exist for the exercise of the visitorial and enforcement power of the DOLE. The question now arises, may the DOLE make a determination of whether or not an employer-employee relationship exists, and if so, to what extent?

The first portion of the question must be answered in the affirmative.

The prior decision of this Court in the present case accepts such answer, but places a limitation upon the power of the DOLE, that is, the determination of the existence of an employer-employee relationship cannot be co-extensive with the visitorial and enforcement power of the DOLE. But even in conceding

the power of the DOLE to determine the existence of an employer-employee relationship, the Court held that the determination of the existence of an employer-employee relationship is still primarily within the power of the NLRC, that any finding by the DOLE is merely preliminary.

This conclusion must be revisited.

No limitation in the law was placed upon the power of the DOLE to determine the existence of an employer-employee relationship. No procedure was laid down where the DOLE would only make a preliminary finding, that the power was primarily held by the NLRC. The law did not say that the DOLE would first seek the NLRC's determination of the existence of an employer-employee relationship, or that should the existence of the employer-employee relationship be disputed, the DOLE would refer the matter to the NLRC. The DOLE must have the power to determine whether or not an employer-employee relationship exists, and from there to decide whether or not to issue compliance orders in accordance with Art. 128(b) of the Labor Code, as amended by RA 7730.

The DOLE, in determining the existence of an employer-employee relationship, has a ready set of guidelines to follow, the same guide the courts themselves use. The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employer's power to control the employee's conduct.[9] The use of this test is not solely limited to the NLRC. The DOLE Secretary, or his or her representatives, can utilize the same test, even in the course of inspection, making use of the same evidence that would have been presented before the NLRC.

The determination of the existence of an employer-employee relationship by the DOLE must be respected. The expanded visitorial and enforcement power of the DOLE granted by RA

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[9] *CRC Agricultural Trading v. National Labor Relations Commission,* G.R. No. 177664, December 23, 2009, 609 SCRA 138, 146.

7730 would be rendered nugatory if the alleged employer could, by the simple expedient of disputing the employer-employee relationship, force the referral of the matter to the NLRC. The Court issued the declaration that at least a *prima facie* showing of the absence of an employer-employee relationship be made to oust the DOLE of jurisdiction. But it is precisely the DOLE that will be faced with that evidence, and it is the DOLE that will weigh it, to see if the same does successfully refute the existence of an employer-employee relationship.

If the DOLE makes a finding that there is an existing employer-employee relationship, it takes cognizance of the matter, to the exclusion of the NLRC. The DOLE would have no jurisdiction only if the employer-employee relationship has already been terminated, or it appears, upon review, that no employer-employee relationship existed in the first place.

The Court, in limiting the power of the DOLE, gave the rationale that such limitation would eliminate the prospect of competing conclusions between the DOLE and the NLRC. The prospect of competing conclusions could just as well have been eliminated by according respect to the DOLE findings, to the exclusion of the NLRC, and this We believe is the more prudent course of action to take.

This is not to say that the determination by the DOLE is beyond question or review. Suffice it to say, there are judicial remedies such as a petition for *certiorari* under Rule 65 that may be availed of, should a party wish to dispute the findings of the DOLE.

It must also be remembered that the power of the DOLE to determine the existence of an employer-employee relationship need not necessarily result in an affirmative finding. The DOLE may well make the determination that no employer-employee relationship exists, thus divesting itself of jurisdiction over the case. It must not be precluded from being able to reach its own conclusions, not by the parties, and certainly not by this Court.

Under Art. 128(b) of the Labor Code, as amended by RA 7730, the DOLE is fully empowered to make a determination as to the existence of an employer-employee relationship in the exercise of its visitorial and enforcement power, subject to judicial review, not review by the NLRC.

There is a view that despite Art. 128(b) of the Labor Code, as amended by RA 7730, there is still a threshold amount set by Arts. 129 and 217 of the Labor Code when money claims are involved, *i.e.*, that if it is for PhP 5,000 and below, the jurisdiction is with the regional director of the DOLE, under Art. 129, and if the amount involved exceeds PhP 5,000, the jurisdiction is with the labor arbiter, under Art. 217. The view states that despite the wording of Art. 128(b), this would only apply in the course of regular inspections undertaken by the DOLE, as differentiated from cases under Arts. 129 and 217, which originate from complaints. There are several cases, however, where the Court has ruled that Art. 128(b) has been amended to expand the powers of the DOLE Secretary and his duly authorized representatives by RA 7730. In these cases, the Court resolved that the DOLE had the jurisdiction, despite the amount of the money claims involved. Furthermore, in these cases, the inspection held by the DOLE regional director was prompted specifically by a complaint. Therefore, the initiation of a case through a complaint does not divest the DOLE Secretary or his duly authorized representative of jurisdiction under Art. 128(b).

To recapitulate, if a complaint is brought before the DOLE to give effect to the labor standards provisions of the Labor Code or other labor legislation, and there is a finding by the DOLE that there is an existing employer-employee relationship, the DOLE exercises jurisdiction to the exclusion of the NLRC. If the DOLE finds that there is no employer-employee relationship, the jurisdiction is properly with the NLRC. If a complaint is filed with the DOLE, and it is accompanied by a claim for reinstatement, the jurisdiction is properly with the Labor Arbiter, under Art. 217(3) of the Labor Code, which provides that the Labor Arbiter has original and exclusive jurisdiction over those

cases involving wages, rates of pay, hours of work, and other terms and conditions of employment, if accompanied by a claim for reinstatement. If a complaint is filed with the NLRC, and there is still an existing employer-employee relationship, the jurisdiction is properly with the DOLE. The findings of the DOLE, however, may still be questioned through a petition for *certiorari* under Rule 65 of the Rules of Court.

In the present case, the finding of the DOLE Regional Director that there was an employer-employee relationship has been subjected to review by this Court, with the finding being that there was no employer-employee relationship between petitioner and private respondent, based on the evidence presented. Private respondent presented self-serving allegations as well as self-defeating evidence.[10] The findings of the Regional Director were not based on substantial evidence, and private respondent failed to prove the existence of an employer-employee relationship. The DOLE had no jurisdiction over the case, as there was no employer-employee relationship present. Thus, the dismissal of the complaint against petitioner is proper.

WHEREFORE, the Decision of this Court in G.R. No. 179652 is hereby **AFFIRMED**, with the **MODIFICATION** that in the exercise of the DOLE's visitorial and enforcement power, the Labor Secretary or the latter's authorized representative shall have the power to determine the existence of an employer-employee relationship, to the exclusion of the NLRC.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-de Castro, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes and *Perlas-Bernabe, JJ.,* concur.

Brion, J., see concurring opinion (in the Result).

Del Castillo, J., on official leave.

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[10] *People's Broadcasting (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment, supra* note 1, at 761.

CONCURRING OPINION (in the Result)

BRION, *J.*:

I **concur in the result** in affirming with modification the Court's Decision of May 8, 2009. This Decision originally dismissed respondent Jandeleon Juezan's money claims against the petitioner People's Broadcasting Service (Bombo Radyo Phils., Inc.). The present Resolution still affirms the ruling in favor of the petitioner, but more importantly to me, it recognizes the validity of the Department of Labor and Employment's (*DOLE's*) plenary power under Article 128(b) of the Labor Code, as amended by Republic Act No. 7730, including its power to determine the existence of employer-employee relationship in the exercise of its Article 128(b) powers.

Background

The case arose when the DOLE Regional Office No. VII conducted an inspection of Bombo Radyo's premises in response to Juezan's money claims against the broadcasting company, resulting in an order for Bombo Radyo to rectify/restitute the labor standards violations discovered during the inspection. Bombo Radyo failed to make any rectification or restitution, prompting the DOLE to conduct a summary investigation. Bombo Radyo reiterated its position, made during the inspection, that Juezan was not its employee. Both parties submitted evidence to support their respective positions.

DOLE Director Rodolfo M. Sabulao found Juezan to be an employee of Bombo Radyo. Consequently, Director Sabulao ordered Bombo Radyo to pay Juezan ₱203,726.30 representing his demanded money claims. Bombo Radyo moved for reconsideration and submitted additional evidence, but Director Sabulao denied the motion. Bombo Radyo then appealed to the DOLE Secretary, insisting that Juezan was not its employee as he was a drama talent hired on a per drama basis. The Acting DOLE Secretary dismissed the appeal for non-perfection due

to Bombo Radyo's failure to put a cash or surety bond, as required by Article 128(b) of the Labor Code.

Bombo Radyo went to the Court of Appeals (*CA*) through a petition for *certiorari* under Rule 65 of the Rules of Court. The CA dismissed the petition for lack of merit. Bombo Radyo then sought relief from this Court, likewise through a Rule 65 petition, contending that the CA committed grave abuse of discretion in dismissing the petition. It justified its recourse to a petition for *certiorari* instead of a Rule 45 appeal by claiming that there was no appeal or any plain and adequate remedy available to it in the ordinary course of law.

On May 8, 2009, the Court's Second Division rendered a Decision reversing the CA rulings and dismissing Juezan's complaint. It reviewed the evidence and found that there was no employer-employee relationship between Juezan and Bombo Radyo. **The Court overruled the CA's recognition of the DOLE's power to determine the existence of employer-employee relationship in a labor standards case under Article 128(b) of the Labor Code**. It stressed that the power to determine the existence of employer-employee relationship is primarily lodged with the National Labor Relations Commission (*NLRC*) based on the clause "in cases where the relationship of employer-employee still exists" in Article 128(b).

The Dissent

The May 8, 2009 Court Decision was not unanimous. I wrote a Dissent and was joined by Justice Conchita Carpio Morales. I took strong exception to the Court's Decision for:

1. taking cognizance of Bombo Radyo's Rule 65 petition for *certiorari* despite the fact that a Rule 45 appeal (petition for review on *certiorari*) was available to the company and would have been the proper recourse since errors of law against the CA were raised;

2. allowing a Deed of Assignment of Bank Deposits as a substitute for a cash or surety bond in perfecting an appeal to the Labor Secretary, in violation of Article 128(b) of the Labor Code which requires **only** a cash or surety bond;

3. re-examining the evidence and finding that there was no employer-employee relationship between Juezan and Bombo Radyo, thereby reversing the DOLE Regional Director's findings which had already lapsed into finality in view of the non-perfection of the appeal;

4. holding that while the Regional Director and the DOLE Secretary may preliminarily determine the existence of an employer-employee relationship in a labor standards case, they can be divested of jurisdiction over the issue by a mere *prima facie* showing of an absence of an employer-employee relationship.

The Public Attorney's Office (*PAO*) moved, with leave of court, to clarify the Decision on the question of when the visitorial and enforcement power of the DOLE can be considered co-extensive or not co-extensive with the power to determine the existence of an employer-employee relationship. The DOLE, in its Comment, also sought to clarify the extent of its visitorial and enforcement power under the Labor Code.

The Court, treating the Motion for Clarification as a Second Motion for Reconsideration, granted the motion and reinstated the petition.[1]

The Court's Ruling

In a reversal of position, the **present Resolution now recognizes that the determination of the existence of an employer-employee relationship by the DOLE, in the exercise of its visitorial and enforcement power under Article 128(b) of the Labor Code, is entitled to full respect and must be fully supported.** It categorically states:

> No limitation in the law was placed upon the power of the DOLE to determine the existence of an employer-employee relationship. No procedure was laid down where the DOLE would only make a preliminary finding, that the power was primarily held by the NLRC. The law did not say that the DOLE would first seek the NLRC's determination of the existence of an employer-employee relationship, or that should the existence of the employer-employee relationship

[1] Resolution dated January 24, 2011.

be disputed, the DOLE would refer the matter to the NLRC. The DOLE must have the power to determine whether or not an employer-employee relationship exists, and from there to decide whether or not to issue compliance orders in accordance with Art. 128(b) of the Labor Code, as amended by RA 7730.[2]

The determination of the existence of an employer-employee relationship by the DOLE must be respected. The expanded visitorial and enforcement power of the DOLE granted by RA 7730 would be rendered nugatory if the alleged employer could, by the simple expedient of disputing the employer-employee relationship, force the referral of the matter to the NLRC. The Court issued the declaration that at least a *prima facie* showing of the absence of an employer-employee relationship be made to oust the DOLE of jurisdiction. But it is precisely the DOLE that will be faced with that evidence, and it is the DOLE that will weigh it, to see if the same does successfully refute the existence of an employer-employee relationship.[3]

This is not to say that the determination by the DOLE is beyond question or review. Suffice it to say, there are judicial remedies such as a petition for *certiorari* under Rule 65 that may be availed of, should a party wish to dispute the findings of the DOLE.[4] (underscoring ours)

In short, **the Court now recognizes that the DOLE has the full power to determine the existence of an employer-employee relationship in cases brought to it under Article 128(b) of the Labor Code. This power is parallel and not subordinate to that of the NLRC**.

Our present ruling on the authority of the DOLE with respect to Article 128(b) of the Labor Code is, to my mind, a very positive development that cannot but benefit our working masses, the vast majority of whom "are not organized and, therefore, outside the protective mantle of collective bargaining."[5]

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[2] Draft Resolution, p. 4.

[3] *Id.* at 5.

[4] *Id.* at 6.

[5] Reply to the Comment on the Dissent.

It should be welcome to the DOLE, too, as it will greatly boost its visitorial and enforcement power, and serve as an invaluable tool in its quest to ensure that workers enjoy minimum terms and conditions of employment. The DOLE's labor inspection program can now proceed without being sidetracked by unscrupulous employers who could, as the Resolution acknowledges, render nugatory the "expanded visitorial and enforcement power of the DOLE granted by RA 7730 xxx by the simple expedient of disputing the employer-employee relationship [and] force the referral of the matter to the NLRC."[6]

But our Resolution does not fully go the DOLE's way. The Court, at the same time, confirms its previous finding that no employer-employee relationship exists between Juezan and Bombo Radyo based on the evidence presented,[7] and that a Deed of Assignment of Bank Deposits can be a substitute for a cash or surety bond in perfecting an appeal to the Labor Secretary.

I continue to entertain strong reservations against the validity of these rulings, particularly the ruling on the Court's acceptance of a Deed of Assignment of Bank Deposits to perfect an appeal to the Labor Secretary; this mode directly contravenes the express terms of Article 128(b) of the Labor Code which requires **only** a cash or surety bond. **I do hope that the Court will consider this ruling an isolated one applicable only to the strict facts obtaining in the present case as this is** a step backward in the DOLE's bid for an orderly and efficient delivery of labor justice.

In light of these reservations, I cannot fully concur with the present Resolution and must only "concur in the result."

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[6] *Supra* note 4.

[7] *Id.* at 7.

EN BANC

[G.R. No. 194645. March 6, 2012]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **AURORA M. CLAVE,** *respondent.*

[G.R. No. 194665. March 6, 2012]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **AURORA M. CLAVE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE OFFENSES; SIMPLE NEGLECT OF DUTY; RESPONDENT WAS NEGLECTFUL IN SAFEGUARDING INFORMATION THAT SHOULD HAVE BEEN KNOWN ONLY TO HERSELF.— Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference. The Court of Appeals sustained the findings of the GSIS and the CSC, and found that there was substantial evidence to hold Clave liable for simple neglect of duty. We agree with the Court of Appeals on this issue. In these cases, the Court of Appeals found that while Clave was not specifically authorized to delete headers, she had authority to cancel granted loans through the transaction code "LSLC." Further, Clave was one of the users of the computer terminal SI42 that was used to cancel the header of Tornea's loan. The Court of Appeals found that the computer terminal SI42 that was used to cancel the header of Tornea's loan was also used by two persons, including Estoque who was previously found guilty of dishonesty and grave misconduct for cancelling the loans and headers of some GSIS members. Thus, it might be possible that Estoque used Clave's operator ID and password in cancelling the header of Tornea's loan. However, granting that this might be true, Clave still failed to explain why other persons knew her operator ID and password that were used in the cancellation of the header. The Court of Appeals correctly ruled that Clave was neglectful in safeguarding information that should have been known only to herself.

2. ID.; ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; LENGTH OF SERVICE MAY CONSIDERED EITHER AS MITIGATING OR AGGRAVATING DEPENDING ON THE CIRCUMSTANCES OF THE CASE; RESPONDENT'S LENGTH OF SERVICE IN THE GOVERNMENT COULD NOT MITIGATE HER LIABILITY CONSIDERING THAT THE PRESENT OFFENSE IS NOT HER FIRST OFFENSE BUT HER THIRD OFFENSE.— Section 53 of the Uniform Rules on Administrative Cases in the Civil Service is clear that length of service may be considered either as mitigating or aggravating depending on the circumstances of the case. Here, it was shown that Clave was previously found guilty by the GSIS of simple neglect of duty in Adm. Case No. 05-027 in its Decision dated 12 February 2007 for unauthorized cancellation of the loan and header of one Basilio C. Benitez. In that case, the GSIS suspended Clave for three months. Earlier, in another Decision dated 10 November 2005, the GSIS found Clave guilty of conduct prejudicial to the interest of the service for her participation in a mass action that resulted in the disruption of GSIS operations, for which she was meted the penalty of suspension for six months and one day. Hence, Clave's length of service in the government could not mitigate her liability considering that the present offense is not her first offense but her third offense. Applying Section 52(B) of the Revised Rules on Administrative Cases in the Civil Service, the penalty of dismissal imposed by the GSIS and affirmed by the CSC should instead be imposed on Clave.

APPEARANCES OF COUNSEL

The Solicitor General for CSC.

Violeta Carmel F. Quintos & Corazon DLP Tanglao-Dacanay for GSIS.

Albano & Associates for respondent.

D E C I S I O N

***PER CURIAM*:**

The Cases

Before the Court are two petitions for *certiorari* assailing the 27 July 2010 Decision[1] and 24 November 2010 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 106229.

In G.R. No. 194645, petitioner Civil Service Commission (CSC) asks this Court to set aside the decision of the Court of Appeals and to impose on respondent Aurora M. Clave (Clave) the penalty of dismissal from service.

In G.R. No. 194665, petitioner Government Service Insurance System (GSIS) likewise prays this Court to set aside the Court of Appeals' decision and to impose on Clave the penalty of dismissal from service.

The Antecedent Facts

These cases originated from Administrative Case No. 05-055 filed by GSIS against Clave. GSIS alleged that Clave was a Senior Computer Operator I of the Social Insurance Group (SIG) at the Manila District Office of the GSIS. On 9 December 2003, Diosdado V. Estoque (Estoque), through the Mainframe Salary Loan System (MSLS), granted Marie Ann F. Tornea (Tornea) an enhanced salary loan with net proceeds of ₱73,123.87 for which GSIS Check No. IC2123810 was issued. The check was later released and negotiated.

On 16 December 2003, Clave, without proper authority or valid reason and in gross violation of pertinent rules and procedure, cancelled the header of Tornea's loan as appearing in the MSLS. Clave used her operator ID (AMCO) and the computer terminal

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[1] *Rollo* (G.R. No. 194645), pp. 24-39. Penned by Associate Justice Rodil V. Zalameda with Associate Justices Apolinario D. Bruselas, Jr. and Mario V. Lopez, concurring.

[2] *Id.* at 40-42.

assigned to her (SI42). By cancelling the loan, Clave made it appear that the loan had not been granted to Tornea.

Clave countered that she was not aware of Tornea's loan because it was processed by Estoque on 9 December 2003 and she was absent on that day. Clave further alleged that the authority given to her on loan applications was limited only to granting salary loan applications and cancelling voided checks or checks that were physically defective due to computer malfunction. Clave alleged that she was not authorized to use Function "D" which was the deletion function used in cancelling the header of Tornea's loan. According to Clave, only the section and division chiefs of the loans administrative division and the Information Technology Services Group (ITSG) can access Function "D." Finally, Clave alleged that, at that time, she had been with the GSIS for 28 years with unblemished service and dedicated loyalty.

The Decision of the GSIS

In its 23 May 2007 Decision,[3] the GSIS found Clave guilty of simple neglect of duty. The GSIS ruled that while Clave was not authorized to use transaction code "LSMH.D" to delete loan headers, she was given authority to cancel loans that were previously granted by using transaction code "LSLC," which was used in this case. The GSIS ruled that each employee tasked to grant or cancel loans is assigned a corresponding user ID and password known only to the specified user. The ID is the tracking device used to establish the identity of the person responsible for any modification or alteration in the MSLS database. All the transactions of a particular user are recorded and logged in the MSLS database. In this case, it was shown that Clave was responsible for the cancellation of the header of Tornea's loan.

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[3] *Rollo* (G.R. No. 194665), pp. 67-74. Signed by GSIS President and General Manager Winston F. Garcia.

The dispositive portion of the GSIS Decision reads:

> WHEREFORE, Aurora M. Clave is found GUILTY of Simple Neglect of Duty. This being the second time she was found guilty of the same offense, she is hereby meted the penalty of DISMISSAL FROM THE SERVICE, which shall carry with it cancellation of eligibility; forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service.
>
> It is so ordered.[4]

Clave filed a motion for reconsideration. In its 7 July 2008 Resolution,[5] the GSIS denied Clave's motion for reconsideration for lack of merit.

Clave filed an appeal from the GSIS Decision to the Civil Service Commission (CSC).

The Decision of the Civil Service Commission

In its Resolution No. 081951[6] dated 13 October 2008, the CSC dismissed the appeal and affirmed the GSIS Decision dismissing Clave from service. The CSC ruled that the GSIS did not err in finding Clave guilty of simple neglect of duty. The CSC found that there was substantial evidence that proved Clave's guilt. The CSC noted that the data extracted by the ITSG showed that the user ID used was AMCO in the transaction "LSLC" to cancel the header of Tornea's loan. It was established that AMCO was Clave's user ID.

The dispositive portion of the CSC Resolution reads:

> WHEREFORE, the appeal of Aurora M. Clave, Senior Computer Operator I, Social Insurance Group, Government Service Insurance System (GSIS), is hereby DISMISSED. Accordingly, the Decision dated May 23, 2007 of the same Office, dismissing her from the service for having been found guilty for the second time, of the offense of Simple Neglect of Duty, is AFFIRMED. She is likewise

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[4] *Id.* at 74.

[5] *Id.* at 89-92.

[6] *Id.* at 150-161. Signed by Commissioners Mary Ann Z. Fernandez-Mendoza and Cesar D. Buenaflor.

imposed the accessory penalties of perpetual disqualification to hold public office, forfeiture of retirement benefits, cancellation of Civil Service eligibility and bar from taking Civil Service examinations.[7]

Clave filed a petition for review before the Court of Appeals, assailing the CSC Resolution.

The Decision of the Court of Appeals

In its 27 July 2010 Decision, the Court of Appeals partly granted Clave's petition. The Court of Appeals affirmed the CSC insofar as it found Clave guilty of simple neglect of duty. However, the Court of Appeals modified the CSC Resolution by reducing the penalty imposed on Clave from dismissal from service to suspension from office without salary and other benefits for one year, with a stern warning that a transgression of a similar nature will warrant her dismissal from service.

The Court of Appeals ruled that there was nothing in the records that showed that Clave acted in bad faith when she gave her operator ID and password to other persons. The Court of Appeals ruled that Clave's carelessness should not equate to dismissal since it was not coupled with bad faith.

The Court of Appeals found that while Clave's guilt was supported by substantial evidence, the imposition of the penalty of dismissal from service was too harsh. The dispositive portion of the Decision of the Court of Appeals reads:

> WHEREFORE, IN VIEW of THE FOREGOING, the petition is partly GRANTED. The Resolution of the Civil Service Commission dated 13 October 2008 is AFFIRMED insofar as it found petitioner Aurora M. Clave guilty of Simple Neglect of Duty, but in lieu of dismissal from the service, petitioner is hereby SUSPENDED from office without salary and other benefits for one (1) year, with a STERN WARNING that another transgression of a similar nature will merit dismissal from the service.
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> SO ORDERED.[8]

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[7] *Id.* at 161.

[8] *Rollo* (G.R. No. 194645), p. 38.

Both the CSC and the GSIS moved for the reconsideration of the Decision of the Court of Appeals.

In its 24 November 2010 Resolution, the Court of Appeals denied the motions.

Hence, the petitions separately filed by the CSC and the GSIS before this Court.

The Issue

Petitioners CSC and GSIS raised a common issue in these cases, that is, whether the Court of Appeals committed a reversible error in reducing the penalty imposed on Clave from dismissal from service to suspension for one year.

The Ruling of this Court

The petitions are meritorious.

Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference.[9] The Court of Appeals sustained the findings of the GSIS and the CSC, and found that there was substantial evidence to hold Clave liable for simple neglect of duty. We agree with the Court of Appeals on this issue.

In these cases, the Court of Appeals found that while Clave was not specifically authorized to delete headers, she had authority to cancel granted loans through the transaction code "LSLC." Further, Clave was one of the users of the computer terminal SI42 that was used to cancel the header of Tornea's loan. The Court of Appeals found that the computer terminal SI42 that was used to cancel the header of Tornea's loan was also used by two persons, including Estoque who was previously found guilty of dishonesty and grave misconduct for cancelling the loans and headers of some GSIS members. Thus, it might be possible that Estoque used Clave's operator ID and password in cancelling the header of Tornea's loan. However, granting that this might be true, Clave still failed to explain why other

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[9] *Office of the Court Administrator v. Garcia-Rañoco,* A.M. No. P-03-1717, 6 March 2008, 547 SCRA 670.

persons knew her operator ID and password that were used in the cancellation of the header. The Court of Appeals correctly ruled that Clave was neglectful in safeguarding information that should have been known only to herself.

However, we do not agree with the penalty imposed by the Court of Appeals.

Simple neglect of duty is a less grave offense punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense.[10]

In reducing the penalty imposed on Clave, the Court of Appeals considered Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, which states:

> Sec. 53. *Extenuating, Mitigating, Aggravating, or Alternative Circumstances.* – In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered:
>
> The following circumstances shall be appreciated:
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> x x x x x x x x x
>
> j. Length of service in the government.
>
> x x x x x x x x x

The Court of Appeals ruled that length of service in the government can mitigate or aggravate the penalty, depending on the circumstances of the case. The Court of Appeals considered Clave's 30 years of service in the government, as well as her lack of bad faith, in reducing the penalty imposed by the GSIS and the CSC. While acknowledging that this was not Clave's first offense for simple neglect of duty, the Court of Appeals invoked the court's discretion to temper the harshness of its judgment with mercy and cited humanitarian reasons for the modification of the decisions of the GSIS and the CSC.

Again, we do not agree with the Court of Appeals.

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[10] *Lao v. Mabutin*, A.M. No. MTJ-06-1646, 16 July 2008, 558 SCRA 411, citing Revised Uniform Rules on Administrative Cases in the Civil Service, Section 52 (B) (1).

Section 53 of the Uniform Rules on Administrative Cases in the Civil Service is clear that length of service may be considered either as mitigating or aggravating depending on the circumstances of the case. Here, it was shown that Clave was previously found guilty by the GSIS of simple neglect of duty in Adm. Case No. 05-027[11] in its Decision dated 12 February 2007 for unauthorized cancellation of the loan and header of one Basilio C. Benitez. In that case, the GSIS suspended Clave for three months. Earlier, in another Decision[12] dated 10 November 2005, the GSIS found Clave guilty of conduct prejudicial to the interest of the service for her participation in a mass action that resulted in the disruption of GSIS operations, for which she was meted the penalty of suspension for six months and one day. Hence, Clave's length of service in the government could not mitigate her liability considering that the present offense is not her first offense but her third offense. Applying Section 52(B) of the Revised Rules on Administrative Cases in the Civil Service, the penalty of dismissal imposed by the GSIS and affirmed by the CSC should instead be imposed on Clave.

WHEREFORE, we **SET ASIDE** the 27 July 2010 Decision and 24 November 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 106229 insofar as it modified the penalty imposed on Aurora M. Clave and **REINSTATE** Resolution No. 081951 dated 13 October 2008 of the Civil Service Commission dismissing Clave from service with perpetual disqualification to hold public office, forfeiture of retirement benefits except accrued leave credits, cancellation of Civil Service eligibility, and prohibition from taking Civil Service examinations.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

del Castillo, J., on official leave.

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[11] *Rollo* (G.R. No. 194665), pp. 75-81.

[12] *Id.* at 82-88.

THIRD DIVISION

[G.R. No. 160882. March 7, 2012]

FELICIDAD STA. MARIA VILLARAN, WILFREDO STA. MARIA VILLARAN, DEOGRACIAS STA. MARIA and ROLANDO STA. MARIA, *petitioners, vs.* **DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD and LORENZO MARIANO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657); JUDICIAL REVIEW; APPEALS; THE RULES OF COURT DIRECT THAT IT IS RULE 43 THAT MUST GOVERN THE PROCEDURE FOR JUDICIAL REVIEW OF DECISIONS, ORDERS OR RESOLUTIONS OF THE DEPARTMENT OF AGRARIAN REFORM (DAR).— We agree with the Court of Appeals that petitioners have resorted to a wrong mode of appeal by pursuing a Rule 65 petition from the DARAB's decision. Section 60 of Republic Act (R.A.) No. 6657 clearly states that the modality of recourse from decisions or orders of the then special agrarian courts is by petition for review. In turn, Section 61 of the law mandates that judicial review of said orders or decisions are governed by the Rules of Court. Section 60 thereof is to be read in relation to R.A. No. 7902, which expanded the jurisdiction of the Court of Appeals to include exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions. On this basis, the Supreme Court issued Circular No. 1-95 governing appeals from all quasi-judicial bodies to the Court of Appeals by petition for review regardless of the nature of the question raised. Hence, the Rules direct that it is Rule 43 that must govern the procedure for judicial review of decisions, orders, or resolutions of the DAR as in this case. Under Supreme Court Circular No. 2-90, moreover, an appeal taken to the Supreme Court or the Court of Appeals by a wrong or inappropriate mode warrants a dismissal. Thus, petitioners

should have assailed the January 16, 2001 decision and the June 25, 2002 resolution of the DARAB before the appellate court *via* a petition for review under Rule 43. By filing a special civil action for *certiorari* under Rule 65 rather than the mandatory petition for review, petitioners have clearly taken an inappropriate recourse. For this reason alone, we find no reversible error on the part of the Court of Appeals in dismissing the petition before it. While the rule that a petition for *certiorari* is dismissible when availed of as a wrong remedy is not inflexible and admits of exceptions – such as when public welfare and the advancement of public policy dictates; or when the broader interest of justice so requires; or when the writs issued are null and void; or when the questioned order amounts to an oppressive exercise of judicial authority – none of these exceptions obtains in the present case.

2. ID.; ID.; ID.; THE FINDINGS CONTAINED IN THE *BARANGAY* AGRARIAN REFORM COMMITTEE (BARC) REPORT INDISPUTABLY PLACE THE PRESENT CONTROVERSY WITHIN THE CLASS OF DISPUTES OVER WHICH THE DAR EXERCISES PRIMARY JURISDICTION AS PROVIDED IN SECTION 50 OF R.A. 6657; AGRARIAN DISPUTES REFER TO ANY CONTROVERSY RELATING TO TENANCY OVER LANDS DEVOTED TO AGRICULTURE, AMONG OTHERS.—The findings contained in the said BARC Report indisputably place the present controversy within the class of disputes over which the DAR exercises primary jurisdiction as provided in Section 50 of R.A. No. 6657. Agrarian disputes refer to any controversy relating to tenancy over lands devoted to agriculture, among others. The statutory vesture of power in the DAR is to be read in conjunction with Section 3 (d) of R.A. No. 6657, which defines an agrarian dispute as 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 under this Act 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 refers to any controversy relating to, *inter alia*, tenancy over lands devoted to agriculture.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ERRORS OF JUDGMENTS ARE NOT PROPER SUBJECTS OF A SPECIAL CIVIL ACTION FOR *CERTIORARI*.— We need not belabor this point, inasmuch as jurisdiction is vested by law and is determined by the material allegations in the complaint. Indeed, when a court, tribunal or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction and, hence, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*.

4. ID.; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW MAY BE RAISED.— These findings have been affirmed in the ordinary course by both the DARAB and the Court of Appeals and, hence, are no longer bound to be reevaluated by this Court. For, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. We have time and again ruled that the factual findings by administrative agencies are generally accorded great respect, if not finality, by the courts because of the special knowledge and expertise of administrative departments over matters falling under their jurisdiction.

5. POLITICAL LAW; ADMINISTRATIVE LAW; DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS; A FAIR AND REASONABLE OPPORTUNITY TO EXPLAIN ONE'S SIDE SUFFICES.— Anent petitioners' lamentation that they had been denied due process, we differ. In administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process. As we held in *Casimiro v. Tandog*: The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means

the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

APPEARANCES OF COUNSEL

Aladdin F. Trinidad for petitioners.
Fredie C. Ignacio for private respondent.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court assailing the October 20, 2003 Decision[1] of the Court of Appeals in CA-G.R. SP No. 72388, as well as the November 25, 2003 Resolution[2] which denied reconsideration. The assailed decision dismissed the Rule 65 petition filed before the Court of Appeals by herein petitioners who sought to set aside the January 16, 2001 decision of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 7365. In turn, the latter assailed decision affirmed the ruling of the Office of the Regional Adjudicator in favor of respondent Lorenzo Mariano in DARAB Case No. IV-DCN-R1-006-95 – one for the disqualification of herein petitioners as agrarian reform beneficiaries.

The facts follow.

Bernardo Sta. Maria had been a tenant-tiller in *Hacienda* Jala-Jala of the estate of the spouses Francisco de Borja and Josefina Tangco. By virtue of Presidential Decree (P.D.) No. 27,

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Eubulo G. Verzola and Edgardo F. Sundiam (deceased), concurring; *rollo*, pp. 44-52.

[2] *Rollo*, p. 54.

he was issued Certificates of Land Transfer in 1973 covering the three (3) parcels of riceland subject of this case. These certificates would then be the basis for the issuance of Emancipation Patent Nos. A-035687, A-035685 and A-035159 and the corresponding Transfer Certificate of Title Nos. M-1677, M-1679 and M-1680 in the Register of Deeds of Rizal.[3] Bernardo died on April 5, 1988, yet the said TCTs were issued in his name only in December 1988.

The controversy arose when Lorenzo allegedly entered the subject property following the death of Bernardo, cultivated the same and appropriated the harvest all to himself. Petitioners claimed they had learned of it only in 1989, and that in the intervening period they admittedly had left the subjects lands idle because of lack of enough rainfall that season.[4] Lorenzo, however, asserted his entry was not illegal, because he supposedly had been a long-time sub-tenant of Bernardo even until the latter's death.[5] Sometime in 1990, the conflict was brought to the *Barangay* Agrarian Reform Committee (BARC) of Poblacion, Jala-Jala, Rizal. No compromise emerged; hence, the BARC referred the matter to the Municipal Agrarian Reform Office (MARO) before which, however, no conciliation was likewise reached.[6] Exasperated, petitioners, on May 21, 1990, formally demanded that Lorenzo vacate the subject property within 30 days from notice.[7] Lorenzo did not heed the demand.

On February 21, 1995, Lorenzo filed before the DARAB Regional Office No. 4 a petition[8] for the disqualification of

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[3] See Transfer Certificate of Title Nos. M-1677, M-1679 and M-1680 of the Register of Deeds of Rizal which cover respectively parcels of land measuring 19,215 sq. m. (Lot No. 83); 7,977 sq. m. (Lot No. 85); and 13,640 (Lot No. 102), records, pp. 13-17.

[4] See RARAD Decision, records, pp. 334-336.

[5] *Id.* at 333.

[6] *Id.* at 335.

[7] Letter dated May 21, 1990, *id.* at 156.

[8] The petition was docketed as DARAB Case No. IV-RI-006-95; *id.* at 1-4.

petitioners as farmer-beneficiaries and for the cancellation of the pertinent emancipation patents and transfer certificates of title issued to Bernardo. He alleged sub-tenancy in his favor which had begun in 1980 until Bernardo's death in 1988, and claimed that, as affirmed by the BARC, he had during that period even undertaken to deliver crop remittances to Bernardo. He asserted too that after Bernardo's death, petitioners had left the lands sitting idle.[9]

Addressing the petition and moving for dismissal thereof, petitioners countered that Lorenzo had on several occasions been merely hired by their late father to haul and spread seedlings on the subject property; that they had left the lands idle as alleged but that the same was due to the unexpected lack of rain during the planting season; that on the contrary, Lorenzo, after Bernardo's death, had entered the subject property by stealth and strategy and cultivated the same for his exclusive benefit; and finally, that it was the regular courts, not the DARAB, which had jurisdiction over the instant dispute inasmuch as Lorenzo was a mere "squatter" or usurper.[10]

On September 4, 1997, the Regional Adjudicator, disposing the petition in favor of Lorenzo, ruled as follows:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Directing the Register of Deeds for the Province of Rizal to effect the immediate cancellation of the following Transfer Certificates of Title covering the subject lots more particularly described in Paragraph 3 of the petition, to wit:

Lot. No.	Area	EP No.	TCT No.
102	15,640 sq.m.	A-035159	M-1680
85	7,977 sq.m.	A-035685	M-1679
83	19,215 sq.m.	A-035681	M-1677

of the Subdivision Plan Psd-04-030752 (OCT), all located at 1st District, Jala-Jala, Rizal which are registered in the name of Bernardo R. Sta. Maria;

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[9] Records, pp. 1-4.

[10] *Id.* at 21-24, 30.

2. Directing the local MARO (Municipal Agrarian Reform Officer) of Jala-Jala, Rizal and PARO (Provincial Agrarian Reform Officer) of Rizal to reallocate the aforementioned lots described in the preceding paragraph to other qualified beneficiaries pursuant to existing law and pertinent guidelines;

3. Maintaining the petitioner in the peaceful possession and cultivation of the subject premises as a qualified potential PD 27 beneficiary [thereof];

4. Perpetually enjoining the respondents, Heirs of the late Bernardo R. Sta. Maria from disturbing the petitioner's peaceful possession and cultivation of the subject premises.

No costs.

SO ORDERED.[11]

Petitioners elevated the case to the DARAB, which, on January 16, 2001, adopted and affirmed the findings and ruling of the Regional Adjudicator as follows:

WHEREFORE, finding no reversible error in the herein assailed decision of September 4, 1998, the same is hereby AFFIRMED *in toto*.

SO ORDERED.[12]

Petitioners moved for reconsideration, alleging a denial of due process and partiality to their disadvantage and, accordingly, sought that the decision of the Regional Adjudicator be declared void upon those grounds.[13] The motion was denied on June 25, 2002.[14]

Petitioners then turned to the Court of Appeals *via* a Petition for *Certiorari*[15] under Rule 65. In it, they alleged that the

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[11] *Id.* at 342-343. The decision was signed by Regional Adjudicator Fe Arche-Manalang.

[12] *Id.* at 404.

[13] *Rollo*, pp. 123-132.

[14] *Id.* at 136.

[15] Docketed as CA-G.R. SP No. 72388, CA *rollo*, pp. 2-29.

DARAB in this case had exhibited a want or excess of jurisdiction, first, in entertaining the instant suit involving a "squatter" on one hand and agrarian reform beneficiaries on the other; and, second, in affirming a void decision that had been promulgated in violation of the due process clause. They likewise fault the DARAB in its erroneous appreciation of the evidence and its manifest bias in favor of Lorenzo.[16]

On October 20, 2003, the Court of Appeals rendered the assailed Decision dismissing the petition as follows:

> WHEREFORE, premises considered, the petition is hereby DENIED and ordered DISMISSED.
>
> SO ORDERED.[17]

The focal ground for the dismissal of the petition was the modality of recourse taken by petitioners. The Court of Appeals observed that the correct remedy from an adverse decision of the DARAB is an appeal by petition for review, not a petition for *certiorari*, to be taken within 15 days from notice.[18] It likewise affirmed the uniform findings of the Regional Adjudicator and the DARAB that the dispute arose from the supposed tenancy relationship which existed between Bernardo and Lorenzo, hence, it came under the competence of the DARAB to resolve. Moreover, it noted that said relations between Lorenzo and Bernardo, as well as the established fact that the supposed agrarian reform beneficiaries had failed to personally cultivate the subject lands, were all contrary to the mandate of the land grant. Finally, it dismissed the claim of denial of due process.[19]

Petitioners' motion for reconsideration[20] was denied.[21] Hence, this recourse to the Court.

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[16] CA *rollo*, pp. 15-27.

[17] *Id.* at 334.

[18] *Id.*

[19] *Id.* at 333.

[20] *Id.* at 336-340.

[21] *Id.* at 349.

Petitioners' stance is unchanged. They hinge the present petition on their obstinate notion that Lorenzo was a mere "squatter" or usurper of the subject property and that, therefore, the dispute is removed from the jurisdiction of the agrarian agency which has thus rendered a void decision on the controversy. They also reiterate their supposed prejudice as they were allegedly denied due process and yet were bound by the assailed decisions which had been rendered without basis in the evidence on record.[22]

In its abbreviated Comment[23] on the petition, the DAR stands by the dismissal of the petition by the Court of Appeals and prayed that inasmuch as petitioners resorted to an improper mode of appeal from the DARAB, the instant petition deserves an outright dismissal.

The petition is utterly unmeritorious.

We agree with the Court of Appeals that petitioners have resorted to a wrong mode of appeal by pursuing a Rule 65 petition from the DARAB's decision. Section 60[24] of Republic Act (R.A.) No. 6657 clearly states that the modality of recourse from decisions or orders of the then special agrarian courts is by petition for review. In turn, Section 61[25] of the law mandates that judicial review of said orders or decisions are governed by

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[22] *Rollo*, pp. 22-32.

[23] *Id.* at 499-500.

[24] SEC. 60. Appeals. — An appeal may be taken from the decision of the Special Agrarian Courts by filing a petition for review with the Court of Appeals within fifteen (15) days from receipt of notice of the decision; otherwise, the decision shall become final.

An appeal from the decision of the Court of Appeals, or from any order, ruling or decision of DAR, as the case may be, shall be by a petition for review with the Supreme Court within a non-extendible period of fifteen (15) days from receipt of a copy of said decision.

[25] Sec. 61. Procedure on Review. — Review by the Court of Appeals or the Supreme Court, as the case may be, shall be governed by the Rules of Court. x x x

the Rules of Court. Section 60[26] thereof is to be read in relation to R.A. No. 7902,[27] which expanded the jurisdiction of the Court of Appeals to include exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions.[28] On this basis, the Supreme Court issued Circular No. 1-95[29] governing appeals from all quasi-judicial bodies to the Court of Appeals by petition for review regardless of the nature of the question raised. Hence, the Rules direct that it is Rule 43 that must govern the procedure for judicial review of decisions, orders, or resolutions of the DAR as in this case. Under Supreme Court Circular No. 2-90,[30] moreover, an appeal taken to the Supreme Court or the Court of Appeals by a wrong or inappropriate mode warrants a dismissal.

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[26] *Supra* note 24.

[27] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF APPEALS, AMENDING FOR THE PURPOSE SECTION NINE OF BATAS PAMBANSA BLG. 129, AS AMENDED, KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980, approved: on February 23, 1995.

[28] Section 1. Section 9 of Batas Pambansa Blg. 129, as amended, known as the Judiciary Reorganization Act of 1980, is hereby further amended to read as follows:

Sec. 9. Jurisdiction. — The Court of Appeals shall exercise:

x x x x x x x x x

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Social Security Commission, the Employees' Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

[29] Dated May 16, 1995. This Circular was incorporated in what is now Rule 43 of the Rules of Court.

[30] GUIDELINES TO BE OBSERVED IN APPEALS TO THE COURT OF APPEALS AND TO THE SUPREME COURT, dated March 9, 1990.

Thus, petitioners should have assailed the January 16, 2001 decision and the June 25, 2002 resolution of the DARAB before the appellate court *via* a petition for review under Rule 43. By filing a special civil action for *certiorari* under Rule 65 rather than the mandatory petition for review, petitioners have clearly taken an inappropriate recourse. For this reason alone, we find no reversible error on the part of the Court of Appeals in dismissing the petition before it. While the rule that a petition for *certiorari* is dismissible when availed of as a wrong remedy is not inflexible and admits of exceptions – such as when public welfare and the advancement of public policy dictates; or when the broader interest of justice so requires; or when the writs issued are null and void; or when the questioned order amounts to an oppressive exercise of judicial authority[31] – none of these exceptions obtains in the present case.

Be that as it may, we shall address the peripheral issues raised in the present petition for clarity and perspective.

Petitioners insist that a *certiorari* petition is the proper relief from the assailed decision and resolution of the DARAB inasmuch as the latter allegedly has gravely abused its discretion amounting to lack of jurisdiction when it took cognizance of the non-agrarian dispute in this case – where the disputants are agrarian reform beneficiaries and a mere usurper or "squatter."[32]

Concededly, the true nature of this case seems to have been obscured by the incidents that ensued between the formal demand to vacate was made by petitioners on respondent on May 21, 1990, and the filing by respondent of the petition for disqualification against petitioners on February 21, 1995. The records bear that on July 3, 1990, herein petitioners had instituted an action for forcible entry/unlawful detainer against respondent involving

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[31] *Po v. Dampal*, G.R. No. 173329, December 21, 2009, 608 SCRA 627, 633-634, citing *Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals*, G.R. No. 165910, April 10, 2006, 487 SCRA 78, 100.

[32] *Rollo*, pp. 23-26.

the subject property.[33] The case, however, had been dismissed because it was filed beyond the reglementary period, as well as on ground of forum shopping in view of the then pendency of the dispute with the Municipal Agrarian Reform Office (MARO). Petitioners appealed to the regional trial court and then to the Court of Appeals which both rendered a dismissal for lack of merit. The dismissal had attained finality.[34] Then, sometime between May and June 1993, herein petitioners had filed a complaint for recovery of possession against respondent respecting the subject properties.[35] In these cases, petitioners uniformly characterized respondent as a mere usurper or "squatter" who, by strategy and stealth and by taking advantage of the supposed illiteracy of their predecessor, succeeded in taking possession of the subject property.[36] Also, in 1998, petitioners had instituted a complaint at the provincial prosecution office ascribing criminal trespass to respondent also relative to the subject farmlands.[37]

Thus, we revert to the origins of the controversy at the BARC level, where the conflict between petitioners and respondent has encountered a first attempt at resolution. We recall that at the said forum, respondent has already sought validation of his rights as Bernardo's sub-tenant. This fact is affirmed in the June 25, 1990 Report[38] of the BARC. Significantly, the committee affirmed that even during Bernardo's lifetime and prior to the issuance of the emancipation patents and TCT's in his name, he had already committed several violations of the terms of his

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[33] The case was docketed as Civil Case No. 316 in the Municipal Circuit Trial Court of Pililla, Rizal. See the October 22, 1990 judgment rendered in that case, records, pp. 204-207.

[34] See CA *rollo*, pp. 209-216, 208.

[35] The complaint was docketed as Civil Case No. 494-M in the Regional Trial Court of Morong, Rizal, records, pp. 146-150.

[36] See Complaint for Recovery of Possession, *rollo*, p. 199, and the Judgment rendered in the forcible entry case, records, p. 205.

[37] *Rollo*, pp. 148-150.

[38] Records, pp. 229-231.

certificates of land award and of the provisions of P.D. No. 27. These violations include his entrusting his landholding, between 1974 until 1988, to the able hands of several sub-tenants who undertook to personally and actually cultivate the property and obliged themselves to deliver crop remittances to him. Indeed, Lorenzo was among these sub-tenants.[39]

The Report also told that the property had outstanding tax obligations in favor of the local government for which both Bernardo and petitioners as his heirs should be held responsible.[40] Quite striking is the finding that for more than ten (10) years – or the period during which Bernardo's landholdings were being farmed by his own tenants – none of herein petitioners had manifested to the agrarian department their intention to take on and continue carrying out the obligations attaching to the land grant.[41] In fact, none of them had coordinated with the DAR even after Bernardo's death on April 5, 1988.[42] Accordingly, the BARC recommended the cancellation of Emancipation Patent Nos. A-035685, A-035687 and A-035159 in the name of Bernardo, in accordance with the provisions of P.D. No. 27. It declared petitioners unqualified to become agrarian reform beneficiaries for failure to signify their intent to step into the shoes of their predecessor.[43] It was also recommended that respondent, who has been actually tilling the lots covered by the subject emancipation patents and TCTs, be allowed to carry on the rights and obligations of Bernardo.[44]

The findings contained in the said BARC Report indisputably place the present controversy within the class of disputes over which the DAR exercises primary jurisdiction as provided in

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[39] June 25, 1990 BARC Report, *id.* at 229.

[40] *Id.* at 229.

[41] *Id.* at 230.

[42] *Id.* at 229.

[43] *Id.* at 230.

[44] *Id.*

Section 50[45] of R.A. No. 6657. Agrarian disputes refer to any controversy relating to tenancy over lands devoted to agriculture, among others.[46] The statutory vesture of power in the DAR is to be read in conjunction with Section 3 (d) of R.A. No. 6657, which defines an agrarian dispute as 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 under

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

It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before it.

It shall have the power to summon witnesses, administer oaths, take testimony, require submission of reports, compel the production of books and documents and answers to interrogatories and issue subpoena, and *subpoena duces tecum* and to enforce its writs through sheriffs or other duly deputized officers. It shall likewise have the power to punish direct and indirect contempt in the same manner and subject to the same penalties as provided in the Rules of Court.

Representatives of farmer leaders shall be allowed to represent themselves, their fellow farmers or their organizations in any proceedings before the DAR: *Provided*, *however*, that when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceedings.

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.

[46] *Rivera v. Santiago,* G.R. No. 146501, August 28, 2003, 410 SCRA 113, 122, cited in the fairly recent case *Octavio v. Perovano,* G.R. No. 172400, June 23, 2009, 590 SCRA 574, 584.

this Act 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 refers to any controversy relating to, *inter alia*, tenancy over lands devoted to agriculture.[47]

We need not belabor this point, inasmuch as jurisdiction is vested by law and is determined by the material allegations in the complaint.[48] Indeed, when a court, tribunal or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction and, hence, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*.[49]

Thus, armed with the BARC Report which itself states that no conciliation has been arrived at by the parties previously, and following a failed attempt at conciliation before the MARO, Lorenzo filed a petition against petitioners for their disqualification to become agrarian reform beneficiaries with the Office of the Regional Adjudicator of the DAR. Relying on the BARC's findings, the Regional Adjudicator noted that, indeed, Bernardo had violated the terms of his land grant when he employed sub-tenants in the cultivation of the subject landholding[50] – a direct contravention of the prohibitions instituted in Section 27[51] of

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[47] See *Octavio v. Perovano, supra*, at 584-585, citing *Amurao v. Villalobos*, G.R. No. 157491, June 20, 2006, 491 SCRA 464, 474.

[48] *Soriano v. Bravo*, G.R. No. 152086, December 15, 2010, 638 SCRA 403, 421-422, citing *Heirs of Julian dela Cruz v. Heirs of Alberto Cruz*, G.R. No. 162890, November 22, 2005, 475 SCRA 743.

[49] *Agapito Rom, et al. v. Roxas & Co., Inc.*, G.R. No. 169331, September 5, 2011.

[50] Records, p. 341.

[51] Section 27. *Prohibitions to Agricultural Lessee.* — x x x

x x x x x x x x x

R.A. No. 3844[52] and in Section 24 (2)[53] of R.A. No. 1199,[54] as amended. These two provisions prohibit an agricultural lessee or tenant from, among others, employing a lessee on the landholding except in case of illness or incapacity where laborers may be employed but whose services shall be on his account. It turned out also that the Regional Adjudicator had found meritorious the BARC findings that Lorenzo was only among other third parties in favor of whom the usufructuary rights over the landholding had been surrendered by Bernardo; and that since Lorenzo was the last sub-tenant to take possession of the landholding in the series of relinquishments made by Bernardo following the issuance of his certificates of land transfer in 1973, it was deemed proper to protect Lorenzo's security of tenure on the subject property.[55] This, especially since Lorenzo's unrebutted evidence is to the effect that he has been in continuous and actual possession and cultivation of the disputed lands.[56]

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(2) To employ a sublessee 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.

[52] AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES, approved August 8, 1963.

[53] Section 24. Prohibitions to tenant. — . . .

x x x x x x x x x

(2) It shall be unlawful for a share-tenant to employ a sub-tenant to furnish labor or any phase of the work required of him under this Act, except in cases of illness or any temporary incapacity on his part, in which eventuality the tenant or any member of his immediate farm household is under obligation to report such illness or incapacity to the landholder. Payment to the sub-tenant, in whatever form, for services rendered on the land under this circumstance, shall be for the account of the tenant.

[54] AN ACT TO GOVERN THE RELATIONS BETWEEN LANDHOLDERS AND TENANTS OF AGRICULTURAL LANDS (LEASEHOLDS AND SHARE TENANCY), approved August 30, 1954.

[55] Records, pp. 340-341.

[56] *Id.* at 338-339.

These findings have been affirmed in the ordinary course by both the DARAB and the Court of Appeals and, hence, are no longer bound to be reevaluated by this Court. For, in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. We have time and again ruled that the factual findings by administrative agencies are generally accorded great respect, if not finality, by the courts because of the special knowledge and expertise of administrative departments over matters falling under their jurisdiction.[57]

Finally, anent petitioners' lamentation that they had been denied due process, we differ. In administrative proceedings, a fair and reasonable opportunity to explain one's side suffices to meet the requirements of due process.[58] As we held in *Casimiro v. Tandog*:[59]

> The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[60]

We, therefore, agree with the Court of Appeals that –

> Petitioners' contention x x x is bereft of merit. From the proceedings before the Barangay Agrarian Reform Council (BARC)

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[57] *Octavio v. Perovano, supra* note 46, at 585, citing *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals,* G.R. No. 142359, May 25, 2004, 429 SCRA 109, 130-131.

[58] *Autencio v. City Administrator Mañara and the City of Cotabato,* G.R. No. 152752, January 19, 2005, 449 SCRA 46, 55, cited in *Department of Agrarian Reform v. Samson,* G.R. Nos. 161910, 161930 June 17, 2008, 554 SCRA 500, 509

[59] G.R. No. 146137, June 8, 2005, 459 SCRA 624, cited in *DAR v. Samson, supra*.

[60] *Id.* at 631.

up to the DARAB, petitioners were given all notices and chances to submit all necessary or required pleadings. From the Regional Adjudicator, they appealed to the DARAB and thereafter filed a Motion for Reconsideration x x x. All these show that they were given ample opportunity to present their side. Due process simply demands an opportunity to be heard and this opportunity was not denied petitioners.[61]

WHEREFORE, the Petition is **DENIED**. The Decision of the Court of Appeals dated October 20, 2003, as well as its Resolution dated November 25, 2003, in CA-G.R. SP No. 72388, are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 165132. March 7, 2012]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **NELLIE R. APOLONIO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN HAS THE POWER TO DIRECTLY IMPOSE ADMINISTRATIVE REMEDIES, INCLUDING REMOVAL FROM OFFICE.— The Ombudsman has the power to impose the penalty of removal, suspension, demotion, fine,

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[61] CA *rollo,* p. 333.

censure, or prosecution of a public officer or employee, in the exercise of its administrative disciplinary authority. The challenge to the Ombudsman's power to impose these penalties, on the allegation that the Constitution only grants it recommendatory powers, had already been rejected by this Court.

2. ID.; ID.; ID.; ID.; THAT THE CONSTITUTION MERELY INDICATED A "RECOMMENDATORY" POWER IN THE TEXT OF SECTION 13 (13), ARTICLE XI OF THE CONSTITUTION DID NOT DEPRIVE CONGRESS OF ITS PLENARY LEGISLATIVE POWER TO VEST THE OMBUDSMAN POWERS BEYOND THOSE STATED.— The conclusion reached by the Court in *Ledesma* is clear: the Ombudsman has been statutorily granted the right to impose administrative penalties on erring public officials. That the Constitution merely indicated a "recommendatory" power in the text of Section 13(3), Article XI of the Constitution did not deprive Congress of its plenary legislative power to vest the Ombudsman powers beyond those stated.

3. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE OFFENSES; SIMPLE MISCONDUCT; COMMITTED IN CASE AT BAR; RESPONDENT'S ACTIONS WERE NOT ATTENDED BY WILLFUL INTENT TO VIOLATE THE LAW OR TO A FLAGRANT DISREGARD OF ESTABLISHED RULES.— Dr. Apolonio's actions were not attended by a willful intent to violate the law or to disregard established rules. Although the Court agrees that Dr. Apolonio's acts contravene the clear provisions of Section 89 of PD 1445, otherwise known as the "Government Auditing Code of the Philippines," such was not attended by a clear intent to violate the law or a flagrant disregard of established rules. Several circumstances militate in favor of this conclusion. Dr. Apolonio merely responded to the employees' clamor to utilize a portion of the workshop budget as a form of Christmas allowance. To ensure that she was not violating any law, Dr. Apolonio even consulted Mr. Montealto, then Finance and Administrative Chief of the NBDB, on the possible legal repercussions of the proposal. Likewise, aside from receiving the same benefit, there is no evidence in the record that Dr. Apolonio unlawfully appropriated in her favor any amount from the approved workshop budget. Therefore, we see no willful intent in Dr. Apolonio's actions.

4. ID.; ID.; ID.; ID.; RESPONDENT'S APPROVAL OF PURCHASE OF THE GIFT CHEQUES USING A PORTION OF THE WORKSHOP'S BUDGET DID NOT AMOUNT TO THE CRIME TECHNICAL MALVERSATION UNDER THE REVISED PENAL CODE.— We disagree with the Ombudsman's insinuations that Dr. Apolonio's acts may be considered technical malversation and, therefore, constitute a crime. In *Parungao v. Sandiganbayan, et al.*, the Court held that in the absence of a law or ordinance appropriating the public fund allegedly technically malversed for another public purpose, an accused did not commit technical malversation as set out in Article 220 of the Revised Penal Code. In that case, the Court acquitted Oscar P. Parungao (then a municipal treasurer) of the charges of technical malversation even though he used funds allotted (by a Department of Environment and Natural Resources circular) for the construction of a road project and re-allocated it to the labor payroll of different *barangays* in the municipality. The Court held that since the budget for the construction of the road was not appropriated by a law or by an ordinance for that specified public purpose, the re-allocation of the budget for use as payroll was not technical malversation. Similarly, in this case, the budget allocation for the workshop was neither appropriated by law nor by ordinance since DBM National Budget Circular No. 442 is not a law or an ordinance. Even if it had been, however, it must be noted that DBM National Budget Circular No. 442 only prescribed the amounts to be used for any workshop, conference or seminar. It did not appropriate the specific amounts to be used in the event in question. Therefore, when Dr. Apolonio approved the purchase of the gift cheques using a portion of the workshop's budget, her act did not amount to technical malversation. Moreover, if her acts did, in fact, constitute technical malversation, the Ombudsman ought to have filed a criminal case against her for violation of Article 220 of the Revised Penal Code.

5. ID.; ID.; ID.; ID.; IF A NEXUS BETWEEN THE PUBLIC OFFICIAL'S ACTS AND FUNCTIONS IS ESTABLISHED, SUCH ACT IS PROPERLY REFERRED TO AS MISCONDUCT.— We cannot likewise agree with the CA's findings that Dr. Apolonio's acts constitute merely as conduct prejudicial to the best interest of the service. x x x If a nexus between the public official's acts and functions is established,

> such act is properly referred to as misconduct. In Dr. Apolonio's case, this nexus is clear since the approval of the cash advance was well within her functions as NBDB's executive officer. x x x Thus, we hold that Dr. Apolonio is guilty of simple misconduct. Although her actions do not amount to technical malversation, she did violate Section 89 of PD 1445 when she approved the cash advance that was not authorized by the NBDB's Governing Board. Further, since the approval of the cash advance was an act done pursuant to her functions as executive officer, she is not merely guilty of conduct prejudicial to the best interest of the service.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

De Guzman Dionido Jucaban and Associates Law Office for respondent.

D E C I S I O N

BRION, *J.*:

Through a petition for review on *certiorari*,[1] petitioner Office of the Ombudsman (*Ombudsman*) seeks the reversal of the decision[2] dated March 23, 2004 of the Court of Appeals (*CA*) in CA-G.R. SP No. 73357 and the resolution dated August 23, 2004, which dismissed the Ombudsman's Motion for Reconsideration. The assailed decision annulled and set aside the decision of the Ombudsman dated August 16, 2002[3] (docketed as OMB ADM-0-01-0405), finding Dr. Nellie R. Apolonio guilty of grave misconduct and dishonesty.

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 11-37.

[2] Penned by Justice Rodrigo V. Cosico, and concurred in by Justices Sergio L. Pestaño and Rosalinda Asuncion-Vicente; *id.* at 43-51.

[3] Signed by Acting Ombudsman Margarito Gervacio, Jr. on August 21, 2002; *id.* at 176-182.

THE FACTUAL ANTECEDENTS

Dr. Apolonio served as the Executive Officer of the National Book Development Board (*NBDB*) from 1996 to August 26, 2002. As NBDB's executive officer, Dr. Apolonio supervised NBDB's Secretariat and managed its day-to-day affairs.[4]

In December 2000, NBDB's Governing Board approved the conduct of a Team Building Seminar Workshop for its officers and employees. The workshop was scheduled to be a two-day event, to be held on December 20-21, 2000.[5]

On March 29, 1995, the Department of Budget and Management (*DBM*) issued National Budget Circular No. 442[6] prescribing a ₱900.00 limit for each participant per day in any seminar/workshop/conference undertaken by any government agency. In compliance with the circular, the NBDB disbursed the amount of ₱108,000.00 to cover the ₱1,800.00 allowance of the 60 employees for the two-day event.[7]

Prior to the conduct of the workshop, some of the employees/participants approached Dr. Apolonio to ask whether a part of their allowance, instead of spending the entire amount on the seminar, could be given to them as cash. Dr. Apolonio consulted Rogelio Montealto,[8] then Finance and Administrative Chief of

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[4] *Id.* at 44. See *also* Republic Act No. 8047, otherwise known as "An Act Providing for the Development of the Book Publishing Industry Through the Formulation and Implementation of a National Book Policy and a National Book Development Plan."

Sec. 9. The Secretariat. — The Board shall have a permanent Secretariat under an Executive Officer, who shall be appointed by the Board.

The authority and responsibility for the day-to-day management and direction of the operations of the affairs of the Board shall be vested in the Executive Officer.

[5] *Supra*.

[6] *Ibid.*

[7] *Ibid.*

[8] *Ibid.*

NBDB, about the proposal and the possible legal repercussions of the proposal. Concluding the proposal to be legally sound and in the spirit of the yuletide season, Dr. Apolonio approved the request.[9] Thus, after the end of the workshop, SM gift cheques were distributed to the participants in lieu of a portion of their approved allowance.[10]

Proceedings before the Ombudsman

On August 24, 2001, Nicasio I. Marte, an NBDB Consultant, filed a complaint against Dr. Apolonio and Mr. Montealto before the Ombudsman. The complaint alleged that Dr. Apolonio and Mr. Montealto committed grave misconduct, dishonesty and conduct prejudicial to the best interest of the service for the unauthorized purchase and disbursement of the gift cheques. Mr. Marte alleged that the NBDB's Governing Board never authorized the disbursement of the funds for the purchase of the gift cheques and that the purchases were never stated in Dr. Apolonio's liquidation report.[11]

In her response, Dr. Apolonio invoked good faith[12] in the purchase of the gift cheques, having in mind the best welfare of the employees who, in the first place, requested the use of part of the budget for distribution to the employees.

On April 3, 2002,[13] Graft Investigation Officer (*GIO*) Plaridel Oscar J. Bohol found Dr. Apolonio and Mr. Montealto administratively liable for conduct prejudicial to the best interest of the service, but exonerated them from the charges of grave misconduct and dishonesty. GIO Bohol recommended the imposition of suspension for six (6) months and one (1) day without pay.

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[9] *Ibid.*

[10] *Id.* at 45.

[11] *Ibid.*

[12] *Ibid.*

[13] *Id.* at 53-67.

GIO Bohol's recommendation was not acted favorably by then Acting Ombudsman Margarito Gervacio, Jr. who adopted the recommendation of GIO Julita M. Calderon. GIO Calderon's recommendation was embodied in a memorandum dated August 16, 2002.[14] In her memorandum, GIO Calderon found Dr. Apolonio and Mr. Montealto guilty of gross misconduct and dishonestly, in addition to the charge of conduct grossly prejudicial to the best interest of the service. Consequently, GIO Calderon recommended that Dr. Apolonio and Mr. Montealto be dismissed from the service.[15]

GIO Calderon found that Dr. Apolonio illegally converted the use of her cash advance, which was solely intended for the workshop, for the purchase of the gift cheques. In doing so, she "abused her authority as the Executive Director of NBDB [and] disregarded the authority of the Board."[16] GIO Calderon described Dr. Apolonio's act as a criminal act of technical malversation.[17] Further, even if a clamor among the participants occurred, the clear provisions of Section 89 of Presidential Decree No. (*PD*) 1445, otherwise known as the "Government Auditing Code of the Philippines," prohibit Dr. Apolonio from releasing the cash advance for a purpose other than that legally authorized.[18] The supposed "noble purpose" for the technical malversation does not negate the illegality of the act.

On August 21, 2002, the Acting Ombudsman approved the findings of GIO Calderon, thereby imposing the penalty of removal against Dr. Apolonio. The Acting Ombudsman likewise denied Dr. Apolonio's motion for reconsideration on September 18, 2002. This prompted Dr. Apolonio to file a petition for review on *certiorari* in the CA.

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[14] *Id.* at 68-74.

[15] *Id.* at 74.

[16] *Id.* at 45.

[17] *Id.* at 71.

[18] *Id.* at 71-72. Section 89. Limitations on cash advance. — No cash advance shall be given unless for a legally authorized specific purpose.

Proceedings before the CA

On March 23, 2004, the CA granted the petition, adjudicating the following issues in Dr. Apolonio's favor.

First, the Ombudsman does not possess the power to directly impose the penalty of removal against a public official. In reaching this conclusion, the CA cited Section 13(3), Article XI of the Constitution which shows that the Ombudsman only possesses recommendatory functions in the removal, suspension, demotion, fine, censure or prosecution of erring government officials and employees.[19] The CA addressed Section 21 of Republic Act No. (*RA*) 6770, otherwise known as "The Ombudsman Act of 1989." It held that RA 6770 "cannot rise above the Constitution"[20] and since it conflicts with the provisions of Section 13(3), Article XI, the Ombudsman's authority to impose penalties against public officials or employees remains to be merely recommendatory.[21]

Second, Dr. Apolonio undeniably realigned a portion of the budget allotted for the workshop for the purchase of the gift cheques. The CA noted, however, that not only is there no evidence that Dr. Apolonio pocketed any amount from the realignment, but her decision to purchase the gift cheques was "greatly influenced" by the appeal of the employee/participants. Thus, the CA held that Dr. Apolonio did not intend to violate the law for a corrupt purpose, thereby negating the Ombudsman's findings that she committed grave misconduct.[22]

The CA likewise found that Dr. Apolonio's acts do not constitute dishonesty because it was not shown that she has predisposition to lie, defraud and deceive which are inimical to the interests of the public service.[23] Since she was motivated by the pleas of

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[19] *Id.* at 48.

[20] *Id.* at 189.

[21] *Id.* at 48.

[22] *Id.* at 49-50.

[23] *Id.* at 50.

the employees and in the spirit of the yuletide season, her actions lack an evil or corrupt motive.[24] Dr. Apolonio is, therefore, only liable for conduct prejudicial to the best interest of the service, the conclusion reached and recommended by GIO Bohol. The CA imposed the penalty of suspension for six (6) months, but due to her retirement from the service, the amount corresponding to her salary for six months was deducted from her retirement benefits.[25]

On April 16, 2004, the Ombudsman moved to intervene and reconsider the decision of the CA. Although the CA granted the motion to intervene, it denied the motion for reconsideration in a Resolution dated August 23, 2004.

THE OMBUDSMAN'S ARGUMENTS

In this petition, the Ombudsman maintains that the CA erred when it reversed the former's decision and held Dr. Apolonio only responsible for conduct prejudicial to the best interest of the service. The Ombudsman maintains that Dr. Apolonio is guilty of grave misconduct for intentionally failing to secure proper authorization from the NBDB's Governing Board.[26] That Dr. Apolonio was motivated by "humanitarian considerations" due to the holidays is irrelevant because she "deliberately ignored the limits of her own authority by allowing public funds to be converted to private use[.]"[27] Citing *Ferriols v. Hiam*,[28] the Ombudsman argues that the misappropriation of funds by an accountable officer for "her personal benefit" constitutes dishonesty and serious misconduct prejudicial to the best interest of the service. The Ombudsman further cites Section 168, Title 4, Article 1 of the Government Accounting and Auditing Manual which clearly limits the "[u]se of moneys appropriated

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[24] *Ibid*.

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

[26] *Id.* at 24.

[27] *Id.* at 25.

[28] A.M. Nos. P-90-414 & P-90-531, August 9, 1993, 225 SCRA 205.

solely for the specific purpose for which appropriated, and for no other, except when authorized by law or by a corresponding appropriating body."[29]

The Ombudsman further takes issue with the CA's findings that grave misconduct and dishonesty were not proven because Dr. Apolonio did not gain from the transaction. In support of this assertion, the Ombudsman points to an "apparent dissimilarity in the amounts actually received by the seminar participants"[30] from the amount appropriated for the workshop. Further, Dr. Apolonio herself was a recipient of the gift cheques. Clearly, she profited from the illegal conversion of funds as well.

Addressing the Court's *obiter dictum*[31] in *Tapiador v. Office of the Ombudsman*,[32] the Ombudsman argues that the case has become moot because it found Dr. Apolonio guilty of conduct prejudicial to the best interest of the service. To be sure, the Ombudsman likewise cited RA 6770 which gives it the authority to "assess and impose commensurate administrative penalt[ies.]"[33]

DR. APOLONIO'S ARGUMENTS

Dr. Apolonio supports the CA decision on the limits of the Ombudsman's authority to impose sanctions on public officials, citing Section 13, Article XI of the Constitution and the deliberations of the Constitutional Commission on this provision.[34] According to her, the Constitution only grants the Ombudsman recommendatory powers for the removal of a public official.[35] Thus, RA 6770, which grants the Ombudsman actual powers to directly impose the penalty of removal, is

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[29] *Rollo*, p. 26.

[30] *Id.* at 29.

[31] *Id.* at 30-31.

[32] G.R. No. 129124, March 15, 2002, 379 SCRA 322.

[33] *Rollo*, p. 31.

[34] *Id.* at 95.

[35] *Id.* at 96.

unconstitutional since it gives powers to the Ombudsman not granted by the Constitution itself.[36] Consequently, it was erroneous for the CA to uphold GIO Bohol's decision to impose a six-month suspension on her since the Constitution only grants recommendatory powers to the Ombudsman.

THE ISSUES IN THIS PETITION

Based on the submissions of the parties, two issues are before us for resolution:

(1) Does the Ombudsman have the power to directly impose the penalty of removal from office against public officials?

(2) Do Dr. Apolonio's acts constitute Grave Misconduct?

THE COURT'S RULING

We rule in the Ombudsman's favor and partially grant the petition.

The Ombudsman has the power to directly impose administrative penalties, including removal from office

The Ombudsman has the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee, in the exercise of its administrative disciplinary authority. The challenge to the Ombudsman's power to impose these penalties, on the allegation that the Constitution only grants it recommendatory powers, had already been rejected by this Court.

The Court first rejected this interpretation in *Ledesma v. Court of Appeals*,[37] where the Court, speaking through Mme. Justice Ynares-Santiago, held:

The creation of the Office of the Ombudsman is a unique feature of the 1987 Constitution. The Ombudsman and his deputies, as protectors

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[36] *Id.* at 98.

[37] G.R. No. 161629, July 29, 2005, 465 SCRA 437.

of the people, are mandated to act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations. Foremost among its powers is the authority to investigate and prosecute cases involving public officers and employees, thus:

> *Section 13*. The Office of the Ombudsman shall have the following powers, functions, and duties:
>
> > (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989, was passed into law on November 17, 1989 and provided for the structural and functional organization of the Office of the Ombudsman. RA 6770 mandated the Ombudsman and his deputies not only to act promptly on complaints but also to enforce the administrative, civil and criminal liability of government officers and employees in every case where the evidence warrants to promote efficient service by the Government to the people.

The authority of the Ombudsman to conduct administrative investigations as in the present case is settled. Section 19 of RA 6770 provides:

> SEC. 19. *Administrative Complaints*. – The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:
>
> (1) Are contrary to law or regulation;
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> (2) Are unreasonable, unfair, oppressive or discriminatory;
>
> (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
>
> (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
>
> (5) Are in the exercise of discretionary powers but for an improper purpose; or

(6) Are otherwise irregular, immoral or devoid of justification.

The point of contention is the binding power of any decision or order that emanates from the Office of the Ombudsman after it has conducted its investigation. Under Section 13(3) of Article XI of the 1987 Constitution, it is provided:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

x x x x x x x x x

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and *recommend* his removal, suspension, demotion, fine, censure, or prosecution, and *ensure compliance therewith*. (Emphasis supplied)[38]

Dr. Apolonio's invocation of our *obiter dictum* in *Tapiador* was likewise rejected in *Ledesma*, *viz.*:

Petitioner insists that the word "*recommend*" be given its literal meaning; that is, that the Ombudsman's action is only advisory in nature rather than one having any binding effect, citing *Tapiador v. Office of the Ombudsman*, thus:

Besides, assuming *arguendo*, that petitioner [was] administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service, more particularly from his position in the BID. Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only "recommend" the removal of the public official or employee found to be at fault, to the public official concerned.

For their part, the Solicitor General and the Office of the Ombudsman argue that the word "*recommend*" must be taken in conjunction with the phrase "*and ensure compliance therewith.*" The proper interpretation of the Court's statement in *Tapiador* should be that the Ombudsman has the authority to determine the administrative liability of a public official or employee at fault, and

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[38] *Id.* at 446-448.

direct and compel the head of the office or agency concerned to implement the penalty imposed. In other words, it merely concerns the *procedural* aspect of the Ombudsman's functions and not its *jurisdiction*.

We agree with the ratiocination of public respondents. Several reasons militate against a literal interpretation of the subject constitutional provision. Firstly, a cursory reading of *Tapiador* reveals that the main point of the case was the failure of the complainant therein to present substantial evidence to prove the charges of the administrative case. The statement that made reference to the power of the Ombudsman is, at best, merely an *obiter dictum* and, as it is unsupported by sufficient explanation, is susceptible to varying interpretations, as what precisely is before us in this case. Hence, it cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination.[39]

In denying *Tapiador* and the reasoning in that case, *Ledesma* traced the constitutional mandate of the Ombudsman, as expressed in the intent of its framers and the constitutionality of RA 6770, *viz*.:

The provisions of RA 6770 support public respondents' theory. Section 15 is substantially the same as Section 13, Article XI of the Constitution which provides for the powers, functions and duties of the Ombudsman. We draw attention to subparagraph 3, to wit:

> SEC. 15. *Powers, Functions and Duties.* – The Office of the Ombudsman shall have the following powers, functions and duties:
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> x x x x x x x x x
>
> (3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: ***Provided***, *That the refusal by any officer without just cause to comply with an order of the Ombudsman to*

[39] *Id.* at 448-449.

> *remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer*[.] (Emphasis supplied)

We note that the proviso above qualifies the "order" "to remove, suspend, demote, fine, censure, or prosecute" an officer or employee – akin to the questioned issuances in the case at bar. That the refusal, without just cause, of any officer to comply with such an order of the Ombudsman to penalize an erring officer or employee is a ground for disciplinary action, is a strong indication that the Ombudsman's "recommendation" is not merely advisory in nature but is actually mandatory within the bounds of law. This should not be interpreted as usurpation by the Ombudsman of the authority of the head of office or any officer concerned. It has long been settled that the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public official is not an exclusive authority but a shared or concurrent authority in respect of the offense charged. By stating therefore that the Ombudsman "recommends" the action to be taken against an erring officer or employee, the provisions in the Constitution and in RA 6770 intended that the implementation of the order be coursed through the proper officer, which in this case would be the head of the BID.

It is likewise apparent that under RA 6770, the lawmakers intended to provide the Office of the Ombudsman with sufficient muscle to ensure that it can effectively carry out its mandate as protector of the people against inept and corrupt government officers and employees. The Office was granted the power to punish for contempt in accordance with the Rules of Court. It was given disciplinary authority over *all* elective and appointive officials of the government and its subdivisions, instrumentalities and agencies (with the exception only of impeachable officers, members of Congress and the Judiciary). Also, it can preventively suspend any officer under its authority pending an investigation when the case so warrants.

The foregoing interpretation is consistent with the wisdom and spirit behind the creation of the Office of the Ombudsman. The records of the deliberations of the Constitutional Commission reveal the following:

MR. MONSOD:

Madam President, *perhaps it might be helpful if we give the spirit and intendment of the Committee. What we wanted to avoid is the situation where it deteriorates into a prosecution arm.* We wanted to give the idea of the Ombudsman a chance, with prestige and persuasive powers, and also a chance to really function as a champion of the citizen.

However, we do not want to foreclose the possibility that in the future, The Assembly, as it may see fit, may have to give additional powers to the Ombudsman; we want to give the concept of a pure Ombudsman a chance under the Constitution.

MR. RODRIGO:

Madam President, what I am worried about is if we create a constitutional body which has neither punitive nor prosecutory powers but only persuasive powers, we might be raising the hopes of our people too much and then disappoint them.

MR. MONSOD:

I agree with the Commissioner.

MR. RODRIGO:

Anyway, since we state that the powers of the Ombudsman can later on be implemented by the legislature, why not leave this to the legislature?

MR. MONSOD:

Yes, because we want to avoid what happened in 1973. I read the committee report which recommended the approval of the 27 resolutions for the creation of the office of the Ombudsman, but notwithstanding the explicit purpose enunciated in that report, the implementing law – the last one, P.D. No. 1630 —did not follow the main thrust; instead it created the Tanodbayan, x x x.

x x x x x x x x x

MR. MONSOD: (reacting to statements of Commissioner Blas Ople):

May we just state that perhaps the honorable Commissioner has looked at it in too much of an absolutist position, The

> Ombudsman is seen as a civil advocate or a champion of the citizens against the bureaucracy, not against the President. On one hand, we are told he has no teeth and he lacks other things. On the other hand, there is the interpretation that he is a competitor to the President, as if he is being brought up to the same level as the President.
>
> With respect to the argument that he is a toothless animal, we would like to say that we are promoting the concept in its form at the present, *but we are also saying that he can exercise such powers and functions as may be provided by law in accordance with the direction of the thinking of Commissioner Rodrigo. We did not think that at this time we should prescribe this, but we leave it up to Congress at some future time if it feels that it may need to designate what powers the Ombudsman need in order that he be more effective. This is not foreclosed.*
>
> So, his is a reversible disability, unlike that of a eunuch; it is not an irreversible disability. (Emphasis supplied)

It is thus clear that the framers of our Constitution intended to create a stronger and more effective Ombudsman, independent and beyond the reach of political influences and vested with powers that are not merely persuasive in character. The Constitutional Commission left to Congress to empower the Ombudsman with prosecutorial functions which it did when RA 6770 was enacted. In the case of *Uy v. Sandiganbayan*, it was held:

> Clearly, the Philippine Ombudsman departs from the classical Ombudsman model whose function is merely to receive and process the people's complaints against corrupt and abusive government personnel. The Philippine Ombudsman, as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. **The legislature has vested him with broad powers to enable him to implement his own actions**. x x x. [emphasis and underscoring ours, citations excluded][40]

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[40] *Id.* at 449-453.

The conclusion reached by the Court in *Ledesma* is clear: the Ombudsman has been statutorily granted the right to impose administrative penalties on erring public officials. That the Constitution merely indicated a "recommendatory" power in the text of Section 13(3), Article XI of the Constitution did not deprive Congress of its plenary legislative power to vest the Ombudsman powers beyond those stated.

We affirmed and consistently applied this ruling in the cases of *Gemma P. Cabalit v. Commission on Audit-Region VII*,[41] *Office of the Ombudsman v. Masing*,[42] *Office of the Ombudsman v. Court of Appeals*,[43] *Office of the Ombudsman v. Laja*,[44] *Office of the Ombudsman v. Court of Appeals*,[45] *Office of the Ombudsman v. Lucero*,[46] and *Office of the Ombudsman v. Court of Appeals*.[47]

To be sure, in the most recent case of *Gemma P. Cabalit v. Commission on Audit-Region VII*,[48] this Court reiterated the principle behind the grant of such powers to the Ombudsman, *viz.*:

> The provisions in R.A. No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under

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[41] G.R. Nos. 180236, 180341, & 180342, January 17, 2012.

[42] G.R. Nos. 165416, 165584, & 165731, January 22, 2008, 542 SCRA 253.

[43] G.R. No. 168079, July 17, 2007, 527 SCRA 798, 806-807.

[44] G.R. No. 169241, May 2, 2006, 488 SCRA 574.

[45] G.R. No. 160675, June 16, 2006, 491 SCRA 92, 108.

[46] G.R. No. 168718, November 24, 2006, 508 SCRA 106, 112-113.

[47] G.R. No. 167844, November 22, 2006, 507 SCRA 593, 610.

[48] *Supra* note 41.

preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty. **Thus, it is settled that the Office of the Ombudsman can directly impose administrative sanctions.** (emphasis ours, citations excluded)

Contrary to the Ombudsman's submissions, however, Dr. Apolonio is guilty of simple misconduct, not grave misconduct or conduct prejudicial to the best interest of the service

We disagree with both the CA's and the Ombudsman's findings. Instead, we find Dr. Apolonio guilty of simple misconduct.

At the outset, the Court notes that no questions of fact are raised in these proceedings. Both the Ombudsman and Dr. Apolonio concede that the latter appropriated funds intended for the workshop to a purpose other than the one stated and approved by the NBDB. Therefore, the only issue to be determined is whether the purchase of the gift cheques constitutes a grave misconduct or, as found by the CA, conduct prejudicial to the best interest of the service. As already stated, we find Dr. Apolonio guilty of neither, and instead hold her liable for simple misconduct.

In *Civil Service Commission v. Ledesma*,[49] the Court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." We further stated that misconduct becomes grave if it "involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial

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[49] G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603, citing *Bureau of Internal Revenue v. Organo,* G.R. No. 149549, February 26, 2004, 424 SCRA 9, and *Castelo v. Florendo,* A.M. No. P-96-1179, October 10, 2003, 413 SCRA 219.

evidence."[50] Otherwise, the misconduct is only simple.[51] Therefore, "[a] person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave."[52]

In *Civil Service Commission v. Ledesma*,[53] respondent was found guilty of simple misconduct by this Court when she accepted amounts meant for the payment of Environmental Compliance Certificates and failed to account for ₱460.00. The Court noted that "[d]ismissal and forfeiture of benefits, however, are not penalties imposed for all infractions, particularly when it is a first offense."[54] Despite evidence of misconduct in her case, the Court emphasized that "[t]here must be substantial evidence that grave misconduct or some other grave offense meriting dismissal under the law was committed."[55]

Further, in *Monico K. Imperial, Jr. v. Government Service Insurance System*,[56] the Court considered Imperial's act of approving the salary loans of eight employees "who lacked the necessary contribution requirements" under GSIS Policy and Procedural Guidelines No. 153-99 as simple misconduct. It refused to categorize the act as grave misconduct because no substantial evidence was adduced to prove the elements of "corruption," "clear intent to violate the law" or "flagrant disregard of established rule" that must be present to characterize the misconduct as grave.

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[50] *Civil Service Commission v. Ledesma, supra*, at 603, citing *Civil Service Commission v. Lucas*, 361 Phil. 486 (1999); and *Landrito v. Civil Service Commission*, G.R. Nos. 104304-05, June 22, 1993, 223 SCRA 564.

[51] *Santos v. Rasalan*, G.R. No. 155749, February 8, 2007, 515 SCRA 97.

[52] *Civil Service Commission v. Ledesma, supra* note 49, at 603.

[53] *Ibid.*

[54] *Id.* at 611.

[55] *Ibid.*

[56] G.R. No. 191224, October 4, 2011.

As in the cases of *Civil Service Commission v. Ledesma*[57] and *Imperial*, Dr. Apolonio's use of the funds to purchase the gift cheques cannot be said to be grave misconduct.

First, Dr. Apolonio's actions were not attended by a willful intent to violate the law or to disregard established rules. Although the Court agrees that Dr. Apolonio's acts contravene the clear provisions of Section 89 of PD 1445, otherwise known as the "Government Auditing Code of the Philippines," such was not attended by a clear intent to violate the law or a flagrant disregard of established rules.[58] Several circumstances militate in favor of this conclusion.

Dr. Apolonio merely responded to the employees' clamor to utilize a portion of the workshop budget as a form of Christmas allowance. To ensure that she was not violating any law, Dr. Apolonio even consulted Mr. Montealto, then Finance and Administrative Chief of the NBDB, on the possible legal repercussions of the proposal. Likewise, aside from receiving the same benefit, there is no evidence in the record that Dr. Apolonio unlawfully appropriated in her favor any amount from the approved workshop budget. Therefore, we see no willful intent in Dr. Apolonio's actions.

Second, we disagree with the Ombudsman's insinuations that Dr. Apolonio's acts may be considered technical malversation and, therefore, constitute a crime. In *Parungao v. Sandiganbayan, et al.*,[59] the Court held that in the absence of a law or ordinance appropriating the public fund allegedly technically malversed for another public purpose, an accused did not commit technical malversation as set out in Article 220 of the Revised Penal Code.[60] In that case, the Court acquitted Oscar P. Parungao (then

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[57] *Supra* note 49.

[58] *Monico K. Imperial, Jr. v. Government Service Insurance System, supra* note 56.

[59] 274 Phil. 451 (1991).

[60] Art. 220. *Illegal use of public funds or property.* — Any public officer who shall apply any public fund or property under his administration to any

a municipal treasurer) of the charges of technical malversation even though he used funds allotted (by a Department of Environment and Natural Resources circular) for the construction of a road project and re-allocated it to the labor payroll of different *barangays* in the municipality. The Court held that since the budget for the construction of the road was not appropriated by a law or by an ordinance for that specified public purpose, the re-allocation of the budget for use as payroll was not technical malversation.

Similarly, in this case, the budget allocation for the workshop was neither appropriated by law nor by ordinance since DBM National Budget Circular No. 442 is not a law or an ordinance. Even if it had been, however, it must be noted that DBM National Budget Circular No. 442 only prescribed the amounts to be used for any workshop, conference or seminar. It did not appropriate the specific amounts to be used in the event in question.

Therefore, when Dr. Apolonio approved the purchase of the gift cheques using a portion of the workshop's budget, her act did not amount to technical malversation. Moreover, if her acts did, in fact, constitute technical malversation, the Ombudsman ought to have filed a criminal case against her for violation of Article 220 of the Revised Penal Code.

We cannot likewise agree with the CA's findings that Dr. Apolonio's acts constitute merely as conduct prejudicial to the best interest of the service. In *Manuel v. Judge Calimag, Jr.*,[61] we held, *viz.*:

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public use other than for which such fund or property were appropriated by law or ordinance shall suffer the penalty of prision correccional in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

[61] 367 Phil. 162, 166 (1999), cited in *Largo v. Court of Appeals*, G.R. No. 177244, November 20, 2007, 537 SCRA 721, 730-731.

Misconduct in office has been authoritatively defined by Justice Tuazon in *Lacson v. Lopez* in these words: "Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x[.] It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x[.] More specifically, in *Buenaventura v. Benedicto*, an administrative proceeding against a judge of the court of first instance, the present Chief Justice defines misconduct as referring 'to a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.'" [emphasis supplied, citations excluded]

Therefore, if a nexus between the public official's acts and functions is established, such act is properly referred to as misconduct. In Dr. Apolonio's case, this nexus is clear since the approval of the cash advance was well within her functions as NBDB's executive officer.[62]

Contrast her situation, for example with the case of *Cabalitan v. Department of Agrarian Reform*,[63] where we held that "the offense committed by the employee in selling fake Unified Vehicular Volume Program exemption cards to his officemates during office hours was not grave misconduct, but conduct

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[62] RA 8047, otherwise known as "An Act Providing for the Development of the Book Publishing Industry Through the Formulation and Implementation of a National Book Policy and a National Book Development Plan."

Sec. 9. The Secretariat. — The Board shall have a permanent Secretariat under an Executive Officer, who shall be appointed by the Board.

The authority **and responsibility for the day-to-day management and direction of the operations of the affairs of the Board** shall be vested in the Executive Officer.

[63] G.R. No. 162805, January 23, 2006, 479 SCRA 452, 456 and 461, cited in *Largo v. Court of Appeals*, *supra* note 61, at 733.

prejudicial to the best interest of the service." Further contrast Dr. Apolonio's case with *Mariano v. Roxas*,[64] where "the Court held that the offense committed by a [CA] employee in forging some receipts to avoid her private contractual obligations, was not misconduct but conduct prejudicial to the best interest of the service because her acts had no direct relation to or connection with the performance of her official duties."

CONCLUSION

Thus, we hold that Dr. Apolonio is guilty of simple misconduct. Although her actions do not amount to technical malversation, she did violate Section 89 of PD 1445 when she approved the cash advance that was not authorized by the NBDB's Governing Board. Further, since the approval of the cash advance was an act done pursuant to her functions as executive officer, she is not merely guilty of conduct prejudicial to the best interest of the service.

WHEREFORE, we **PARTIALLY GRANT** the Office of the Ombudsman's petition for review on *certiorari*, and **MODIFY** the decision of the Court of Appeals in CA-G.R. SP No. 73357. We find Dr. Nellie R. Apolonio **GUILTY** of **SIMPLE MISCONDUCT**. In the absence of any showing that this is her second offense for simple misconduct, we impose the penalty of **SUSPENSION** for **SIX MONTHS** against Dr. Apolonio,[65] but due to her retirement from the service, we order the **amount** corresponding to her six-month salary to be deducted from her retirement benefits.

No pronouncement as to costs.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

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[64] 434 Phil. 742, 751 (2002), cited in *Largo v. Court of Appeals, supra,* at 733.

[65] Pursuant to 52 (B) (2), Rule IV, Revised Uniform Rules on Administrative Cases in the Civil Service.

SECOND DIVISION

[G.R. No. 170964. March 7, 2012]

ELSA MACANDOG MAGTIRA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ESTAFA; ELEMENTS; MISAPPROPRIATION; FAILURE TO ACCOUNT UPON DEMAND FOR FUNDS OR PROPERTY HELD IN TRUST WITHOUT OFFERING ANY SATISFACTORY EXPLANATION FOR THE INABILITY TO ACCOUNT IS CIRCUMSTANTIAL EVIDENCE OF MISAPPROPRIATION.— Misappropriation as an element of the offense of *estafa* connotes an act of using, or disposing of, another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. We have previously held that the failure to account upon demand for funds or property held in trust without offering any satisfactory explanation for the inability to account is circumstantial evidence of misappropriation. We have also held that the demand for the return of the thing delivered in trust and the failure of the accused to account are similarly circumstantial evidence that the courts can appreciate.

2. ID.; ID.; ID.; ID.; PETITIONER FAILED TO EXPLAIN HER FAILURE TO ACCOUNT AND TO DELIVER THE *PALUWAGAN* FUNDS ARISING FROM CONTRIBUTIONS MADE BY THE PRIVATE COMPLAINANTS AFTER THE ALLEGED ROBBERY INCIDENT.— The petitioner failed to explain her failure to account and to deliver the *Paluwagan* funds arising from contributions made by the private complainants *after the alleged robbery incident*. On record are the positive and unrefuted testimonies of the private complainants that they remitted contributions to the petitioner even after the robbery. In other words, if the petitioner had in fact been robbed of *Paluwagan* funds, the robbery would not have affected the accounting and the delivery of the *Paluwagan* funds arising from the contributions made by the private complainants *after* the alleged robbery. As the records show, despite the continued

receipt of contributions from the private complainants, the petitioner failed to account for, and to deliver, the *Paluwagan* funds.

3. ID.; ID.; ID.; ID.; ALL THE ELEMENTS OF ESTAFA UNDER ARTICLE 315, PARAGRAPH 1 (b) OF THE REVISED PENAL CODE ARE ESTABLISHED IN CASE AT BAR.— We find that all the elements of estafa under Article 315, paragraph 1 (b) of the Revised Penal Code are present in the present case, having been established by the prosecution's evidence and by the petitioner's own admissions. The **first element** was established by the evidence showing that the petitioner received various sums of money from the private complainants to be held in trust for them under the *Paluwagan* operation. The petitioner admitted that she was under obligation, at a fixed date, to account for and to deliver the *Paluwagan* funds to the private complainants in the sequential order agreed upon among them. The **second element** was established by the evidence that the petitioner failed to account for and to deliver the *Paluwagan* funds to the private complainants on the agreed time of delivery. The **third and fourth elements** of the offense were proven by evidence showing that the petitioner failed to account for and to deliver the *Paluwagan* funds to the private complainants despite several demands made upon her by the private complainants. Each of the private complainants testified as to how they were prejudiced when they failed to receive their allotted *Paluwagan* funds. Given the totality of evidence, we uphold the conviction of the petitioner of the crime charged.

APPEARANCES OF COUNSEL

Marcelo G. Rempillo, Jr. for petitioner.
The Solicitor General and *Samuel Baldado* for respondent.

D E C I S I O N

BRION, *J.*:

Petitioner Elsa Macandog Magtira seeks in this petition for review on *certiorari* (filed under Rule 45 of the Rules of Court)

to reverse the decision[1] and the resolution[2] of the Court of Appeals (*CA)* in CA-G.R. CR No. 27252. The CA affirmed with modification the joint decision[3] of the Regional Trial Court (*RTC*) of Makati City, Branch 148, that found the petitioner guilty beyond reasonable doubt of seven (7) counts of *estafa* penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended.

The records show that seven criminal informations for *estafa* were filed against the petitioner. Except for the amounts misappropriated and the private complainants[4] involved, the informations were similarly worded, as follows:

> That on or about and sometime during the year of 2000, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused received in trust and for administration from complainant x x x as contribution to a *Paluwagan* in the amount of x x x under [the] safekeeping of accused [Elsa] Macandog Magtira, with the express and legal obligation on the part of the accused to return and/or account for the same, but the accused far from complying with her obligation with intent to gain, abuse of confidence and to defraud complainant, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to her own personal use and benefit the said contribution (*Paluwagan*) and/or the proceeds thereof x x x and despite repeated demands, the accused failed and refused and still fails and refuses to do so, to the damage and prejudice of the complainant in the aforementioned amount.[5]

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[1] Dated November 10, 2005. Penned by Associate Justice Fernanda Lampas Peralta, and concurred in by Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga; *rollo*, pp. 39-55.

[2] Dated January 10, 2006; *id.* at 57.

[3] Dated February 7, 2003 in Criminal Case Nos. 02-1766-02-1772. The Joint Decision was penned by Judge Oscar B. Pimentel; *id.* at 67-103.

[4] They are: (1) Alfredo Martinez, (2) Cherry Bondocoy, (3) Rebecca Zoleta, (4) Maria Ester Binaday, (5) Saturnina Zaraspe Perez, (6) Emerita Velasco, and (7) Domingo Venturina.

[5] *Rollo*, pp. 58-64.

The petitioner entered a plea of "not guilty" to all the charges.[6] Thereafter, the seven cases were tried jointly. The following facts were established: *first*, the petitioner was the custodian of the funds of the *Paluwagan* where the private complainants were members;[7] *second*, that demands were made against the petitioner by the private complainants for the return of their contributions in the *Paluwagan*; and *third*, the petitioner failed to meet the private complainants' demand for the return of their contributions.

During trial, the petitioner denied misappropriating the contributions of the private complainants. She claimed that she was robbed of the *Paluwagan* funds in the early afternoon of February 28, 2000. By way of corroboration, the petitioner presented a copy of an entry in the police blotter dated February 28, 2000 and the affidavits of five individuals attesting to the robbery.[8]

From the evidence adduced, the RTC convicted the petitioner of the crime charged and declared:

> [I]t is clear to the Court that the accused is not disputing in all the cases that (a) sizeable amount of money belonging to different persons were received by her in trust or for administration, involving the duty to make a delivery thereof to the owners; (2) that there is a demand to her that same be returned but she cannot do so.[9]

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[6] *Id.* at 71.

[7] *Id.* at 65-66.

[8] *First*, the affidavits of Felipe Macandog and Segundo Macariola stated that they found the petitioner bound and gagged inside her house on February 28, 2000. *Second*, the joint affidavit of spouses Reynaldo and Marina Ainza attested that together with the petitioner's lessor, Nilo Lopez, they went to the house of the petitioner and saw her lying on the floor and untied; while the room was in disarray. Upon the lessor's instruction, the spouses sought police assistance. *Lastly*, Nilo Lopez averred in his affidavit that he immediately went to the house of the petitioner after being informed of the robbery. That upon his instruction, the police was called.

[9] *Rollo*, p. 89.

The RTC explained that while the robbery of the entrusted money is a valid defense against *estafa*, the petitioner's evidence of the robbery was wanting. The RTC observed that the petitioner's testimony was self-serving and inconsistent on some of the material details of the robbery. The RTC also noted the petitioner's failure to account for and to deliver the contributions which were collected from the private complainants after the robbery. Finally, the RTC found that the petitioner's credibility affected by her own demeanor of indifference during trial showed no "semblance of worry or [of] being concerned"[10] about the serious charges filed against her.

Dissatisfied with the RTC's decision, the petitioner elevated her conviction to the CA which affirmed the findings of the RTC but modified the penalty of imprisonment imposed. The CA held:

(1) In Criminal Case No. 02-1766 where the amount of the fraud is ₱85,000.00, the incremental penalty is six (6) years to be added to the maximum period of the penalty provided for by law, or eight (8) years of *prision mayor* minimum plus six (6) years of the incremental penalty. Hence, the indeterminate sentence is four (4) years and two (2) months of *prision correccional* medium, as the minimum penalty, to fourteen (14) years of *reclusion temporal* minimum, as the maximum penalty.

(2) In Criminal Case No. 02-1767 where the amount of the fraud is ₱65,000.00, the incremental penalty is four (4) years to be added to the maximum period of the penalty provided for by law, or eight (8) years of *prision mayor* minimum plus four (4) years of the incremental penalty. Hence, the indeterminate sentence is four (4) years and two (2) months of *prision correccional* medium, as the minimum penalty, to twelve (12) years of *prision mayor* maximum, as the maximum penalty.

(3) In Criminal Case No. 02-1768 where the amount of the fraud is ₱60,000.00, the incremental penalty is three (3) years to be added to the maximum period of the penalty provided for by law, or eight (8) years of *prision mayor* minimum plus

[10] *Id.* at 93.

three (3) years of the incremental penalty. Hence, the indeterminate sentence is four (4) years and two (2) months of *prision correccional* medium, as the minimum penalty, to eleven (11) years of *prision mayor* maximum, as the maximum penalty.

(4) In Criminal Case No. 02-1769 where the amount of the fraud is ₱34,000.00, the incremental penalty is one (1) year to be added to the maximum period of the penalty provided for by law, or eight (8) years of *prision mayor* minimum plus one (1) year of the incremental penalty. Hence, the indeterminate penalty should be four (4) years and two (2) months of *prision correccional* medium, as the minimum penalty, to nine (9) years of *prision mayor* medium, as the maximum penalty.

(5) In Criminal Case No. 02-1770 where the amount of the fraud is ₱85,400.00, the incremental penalty is six (6) years to be added to the maximum period of the penalty provided for by law, or eight (8) years of *prision mayor* minimum plus six (6) years of the incremental penalty. Hence, the indeterminate sentence is four (4) years and two (2) months of *prision correccional* medium, as the minimum penalty, to fourteen (14) years of *reclusion temporal* minimum, as the maximum penalty.

(6) In Criminal Case No. 02-1771 where the amount of the fraud is ₱100,000.00, the incremental penalty of seven (7) years is to be added to the maximum period of the penalty provided for by law, or eight (8) years of *prision mayor* minimum plus seven (7) years of the incremental penalty. Hence, the indeterminate sentence is four (4) years and two (2) months of *prision correccional* medium, as the minimum penalty, to fifteen (15) years of *reclusion temporal* medium, as the maximum penalty.

(7) In Criminal Case No. 02-1772 where the amount of the fraud is ₱153,000.00, the incremental penalty is thirteen (13) years to be added to the maximum period of the penalty provided by the law. The penalty cannot go beyond twenty (20) years as the law provides that in no case shall the penalty be higher than *reclusion temporal* regardless of the amount of the fraud. Hence, the indeterminate sentence is four (4) years and two (2) months of *prision correccional* medium, as the minimum

> penalty, to twenty (20) years of *reclusion temporal* maximum, as the maximum penalty.[11] (italics supplied)

The CA denied the petitioner's motion for reconsideration;[12] hence, the present petition.

The Issue

The ultimate issue for consideration is whether the petitioner should be held liable for the crimes of *estafa*. The petitioner argues that the CA and the RTC erred in rejecting her argument that no misappropriation of the *Paluwagan* funds was clearly established in the record.

In its comment, the Office of the Solicitor General (*OSG*) prays for the dismissal of the petition. The OSG maintains that the elements constituting the crime of *estafa* with abuse of confidence had been fully established by the prosecution's evidence. The OSG insists that the petitioner failed to clearly prove by competent evidence her affirmative defense of robbery. The OSG also insists that the petitioner's conduct in failing to inform all the members of the alleged robbery bolsters the circumstance of her misappropriation of the *Paluwagan* funds. Lastly, the petitioner's misappropriation of the *Paluwagan* funds was substantiated by her failure to deliver the *Paluwagan* funds out of the contributions made by the private complainants after the robbery.

The petitioner subsequently filed a reply, reiterating the arguments in her petition.

The Court's Ruling

We deny the petition for lack of merit.

Preliminary consideration

A preliminary matter we have to contend with in this case is the propriety of resolving one of the issues raised by the petitioner

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[11] *Id.* at 52-54.

[12] *Supra* note 2.

who has appealed her judgment of conviction by way of a Rule 45 review. A reading of the petition shows that the petitioner raises both errors of law and of fact allegedly committed by the CA and the RTC in their decisions. *First*, we are called to determine whether a proper application of law and jurisprudence has been made in the case. *Second*, we are also called to examine whether the CA and the RTC correctly appreciated the evidence to which the two courts anchor their conclusions.

As a rule, a Rule 45 review is confined to the resolution of errors of law committed by the lower courts. Further, in a Rule 45 review, the factual findings of the RTC, especially when affirmed by the CA, are generally held binding and conclusive on the Court.[13] We emphasize that while jurisprudence has provided exceptions[14] to this rule, the petitioner carries the burden of proving that one or more exceptional circumstances are present in the case. The petitioner must additionally show that the cited exceptional circumstances will have a bearing on the results of the case.

The petitioner cites in this regard the alleged misappreciation of the evidence committed by the CA and the RTC. The petitioner contends that both courts disregarded her evidence, namely: the affidavits of five individuals and the police blotter. She argues that she should not be faulted for the non-presentation

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[13] *Iron Bulk Shipping Phil., Co., Ltd. v. Remington Industrial Sales Corp.*, 462 Phil. 694, 703-704 (2003).

[14] They are: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) *when the findings are grounded entirely on speculations, surmises or conjectures*; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; (7) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (*Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 20-21.)

in court of the five individuals who executed the affidavits which attested to the robbery since she was then represented by a counsel *de oficio*. She also argues that both courts disregarded the evidence of her reputation of being a kind person of good moral character. She asserts that she delivered to the private complainants their respective shares in the *Paluwagan* funds prior to the robbery.

She further argues that the conclusions of the CA and the RTC were contrary to the Court's ruling in *Lim v. Court of Appeals*[15] where it held that *estafa* cannot be committed through negligence or, as in this case, where the explanation by the accused raises reasonable doubt on whether the amount in question was misappropriated.

After a careful study of the records, we find that the petitioner's cited exceptional circumstances are more imagined than real. We find no compelling reason to deviate from the factual findings of the CA and the RTC in this regard.

Misappropriation as an element of the offense of *estafa* connotes an act of using, or disposing of, another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon.[16] We have previously held that the failure to account upon demand for funds or property held in trust without offering any satisfactory explanation for the inability to account is circumstantial evidence of misappropriation.[17] We have also held that the demand for the return of the thing delivered in trust and the failure of the accused to account are similarly circumstantial evidence that the courts can appreciate.[18]

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[15] G.R. No. 102784, April 7, 1997, 271 SCRA 12, 22.

[16] *Aw v. People*, G.R. No. 182276, March 29, 2010, 617 SCRA 64, 77.

[17] *Id.* at 77-78.

[18] *Id.* at 78, citing *Filadams Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, March 30, 2004, 426 SCRA 460, 468.

As the CA and the RTC did, we find no clear evidence establishing that the petitioner was actually robbed of the *Paluwagan* funds. In the first place, the five individuals who executed the affidavits were not presented in court. While the petitioner faults the counsel *de oficio* for their non-presentation in court, we find no proof that her counsel had been negligent in performing his legal duties. Incidentally, we also reject this line of argument for two other reasons: *first*, it was raised only for the first time in the present appeal; and *second*, it involves a factual determination of negligence which is inappropriate under a Rule 45 review.

We additionally note from a facial examination of the affidavits that the affiants were not even eyewitnesses to the robbery; hence, their statements do not sufficiently prove the actual occurrence of the robbery. More importantly, the affidavits do not also establish with reasonable certainty that the petitioner was actually robbed of the *Paluwagan* funds.

Moreover, we cannot give much credence to the police blotter whose contents were mainly based on the statements made by the petitioner to the police. If at all, it is evidence of what was entered, not of the truth or falsity of the entry made. We give due respect to the evaluation made by the RTC in this regard:

> Thus, there seems to be a discrepancy as to the time and number of persons (robbers) who entered the residence of the accused. Further, the accused claims that there was a policeman who went to her house who was called by her lessee (or lessor) but the accused cannot remember his name.
>
> But then, the accused never testified as to whether the policeman investigated the scene of the crime and some people in the vicinity. Surely at that hour, near such market, where there are people in the vicinity, people will notice strangers or other persons who enter the house of another or who leave the same whether in a hurry or not.
>
> The accused even admitted that she was hesitant to report the matter to the police[.] Why was the accused hesitant? She claims that the robber warned her that he will harm her if she reports the incident. But immediately after the incident, the accused reported

the incident, but nothing happened to her up to the present.[19] (underscoring supplied)

Besides, the petitioner failed to explain her failure to account and to deliver the *Paluwagan* funds arising from contributions made by the private complainants *after the alleged robbery incident*. On record are the positive and unrefuted testimonies of the private complainants that they remitted contributions to the petitioner even after the robbery. In other words, if the petitioner had in fact been robbed of *Paluwagan* funds, the robbery would not have affected the accounting and the delivery of the *Paluwagan* funds arising from the contributions made by the private complainants *after* the alleged robbery. As the records show, despite the continued receipt of contributions from the private complainants, the petitioner failed to account for, and to deliver, the *Paluwagan* funds.

The Petitioner's Conviction

We now go to the crux of the present appeal and determine whether the evidence adduced warrants the petitioner's conviction of the crime charged.

The offense of *estafa* committed with abuse of confidence has the following elements under Article 315, paragraph 1(b) of the Revised Penal Code, as amended:

(a) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same[;]

(b) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt[;]

(c) that such misappropriation or conversion or denial is to the prejudice of another; and

(d) there is demand by the offended party to the offender.[20]

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[19] *Supra* note 3, at 92.

[20] *Aw v. People, supra* note 15, at 75.

We find that all the above elements are present in the present case, having been established by the prosecution's evidence and by the petitioner's own admissions. The **first element** was established by the evidence showing that the petitioner received various sums of money from the private complainants to be held in trust for them under the *Paluwagan* operation. The petitioner admitted that she was under obligation, at a fixed date, to account for and to deliver the *Paluwagan* funds to the private complainants in the sequential order agreed upon among them. The **second element** was established by the evidence that the petitioner failed to account for and to deliver the *Paluwagan* funds to the private complainants on the agreed time of delivery. The **third and fourth elements** of the offense were proven by evidence showing that the petitioner failed to account for and to deliver the *Paluwagan* funds to the private complainants despite several demands made upon her by the private complainants. Each of the private complainants testified as to how they were prejudiced when they failed to receive their allotted *Paluwagan* funds.

Given the totality of evidence, we uphold the conviction of the petitioner of the crime charged.

The Penalty

The decisive factor in determining the criminal and civil liability for the crime of *estafa* depends on the value of the thing or the amount defrauded.[21] With respect to the civil aspect of the case, the petitioner filed a manifestation[22] which showed the satisfaction of her civil monetary liability with six (6) out of the seven (7) private complainants.

Anent her criminal liability, the evidence shows that the amount of money remitted by the private complainants to the

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[21] *Pamintuan v. People*, G.R. No. 172820, June 23, 2010, 621 SCRA 538, 552.

[22] *Rollo*, pp. 194-198 and 225. The Acknowledgment Receipts were issued by (1) Alfredo Martinez, (2) Cherry Bondocoy (received by Cielo Anduque), (3) Rebecca Zoleta, (4) Maria Ester Binaday, (5) Saturnina Zaraspe Perez (wife of Aniceto Perez); and (6) Emerita Velasco. The petitioner is still paying Maria Venturina on installment basis.

petitioner all exceeded the amount of ₱22,000.00. In this regard, the first paragraph of Article 315 of the Revised Penal Code, as amended, provides the appropriate penalty if the value of the thing or the amount defrauded exceeds ₱22,000.00:

> *1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. [italics ours]

As provided by law, the maximum indeterminate penalty when the amount defrauded exceeds ₱22,000.00 is pegged at *prision mayor* in its minimum period or anywhere within the range of six (6) years and one (1) day to eight (8) years, plus one year for every ₱10,000.00 in excess of ₱22,000.00 of the amount defrauded but not to exceed twenty years. In turn, the minimum indeterminate penalty shall be one degree lower from the prescribed penalty for *estafa*, which in this case is anywhere within the range of *prision correccional* in its minimum and medium periods or six (6) months and one (1) day to four (4) years and two (2) months.[23] Applying this formula, we affirm the penalty imposed by the CA as it is fully in accordance with the law.

WHEREFORE, premises considered, we **DENY** the petition for lack of merit. We **AFFIRM** the decision dated November 10, 2005 and the resolution dated January 10, 2006 of the Court of Appeals in CA-G.R. CR No. 27252, finding petitioner Elsa Macandog Magtira **GUILTY** beyond reasonable doubt of seven (7) counts of *estafa* penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended.

SO ORDERED.

Carpio (Chairperson), Perez, Sereno, and *Reyes, JJ.*, concur.

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[23] *People v. Temporada*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 302.

SECOND DIVISION

[G.R. No. 174173. March 7, 2012]

MA. MELISSA A. GALANG, *petitioner, vs.* **JULIA MALASUGUI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE PARTIES AND ARE NOT REVIEWABLE BY THE COURT EXCEPT WHEN THE FINDINGS OF FACT ARE CONFLICTING LIKE IN THE CASE AT BAR.— When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions: x x x **(5) When the findings of fact are conflicting;** x x x That said and done, we conclude that there was indeed an illegal dismissal of the respondent by the petitioner. We proceed from the premises that (1) as found by the labor arbiter, the NLRC and the CA, there is an employer-employee relationship between petitioner and respondent; and (2) it is a fact that there was a severance of employment.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; JUST CAUSES; ABANDONMENT; ALLEGED ABANDONMENT IS DOUBTFUL; NO SUBSTANTIAL EVIDENCE THAT WILL PROVE RESPONDENT'S CATEGORICAL INTENTION TO DISCONTINUE EMPLOYMENT.— Abandonment is a form of neglect of duty, one of the just causes for an employer to terminate an employee. It is a hornbook precept that in illegal dismissal cases, the employer bears the burden of proof. For a valid termination of employment on the ground of abandonment, the employer must prove, by substantial evidence, the concurrence of the employee's failure to report for work for no valid reason and his categorical intention to discontinue employment. There is in this case no substantial evidence that will prove respondent's categorical intention to discontinue employment. On the contrary, the story of abandonment is simply doubtful.

3. ID.; ID.; ID.; ID.; THERE MUST BE A CONCURRENCE OF THE INTENTION TO ABANDON AND SOME OVERT ACTS FROM WHICH AN EMPLOYEE MAY BE DEDUCED AS HAVING NO MORE INTENTION TO WORK; THE INTENT TO DISCONTINUE THE EMPLOYMENT MUST BE SHOWN BY CLEAR PROOF THAT IT WAS DELIBERATE AND UNJUSTIFIED.— Respondent has been in the employ of petitioner for six years when the alleged abandonment happened. Being scolded, if it were true, is hardly a reason for a gardener of six years to just pack up and leave the work premises where she was even allowed to reside, at a time when she was ill and needed medical attention. Indeed, the alleged scolding is itself incredible. The given reason was that respondent failed to show up at her arranged appointment with the radiologist. It is hard to believe that a sick gardener, certainly of minimal means, would refuse the offer of medical services. In fact, the basic allegation in respondent's complaint for illegal dismissal was that petitioner's "treatment to her became sour especially when she requested that she be examined by a doctor for her cough." And, completely belying the petitioner's assertion that respondent failed to show up at the appointed time with the radiologist are two certificates issued by Radiologist Susan R. Gaspar stating that on 30 January 1999 and on 1 February 1999 respondent had her chest x-ray taken at the Radiology Section of the Polyclinic Davao. In the case of *Garcia v. NLRC* correctly relied upon by the Court of Appeals, we emphasized that there must be a *concurrence of the intention to abandon and some overt acts* from which an employee may be deduced as having no more intention to work. Such intent to discontinue the employment must be *shown by clear proof that it was deliberate and unjustified.* In the instant case, the overt act relied upon by petitioner is not only a doubtful occurrence but is, if it did transpire, even consistent with the dismissal from employment posited by the respondent. The factual appraisal of the Court of Appeals is correct. Petitioner was displeased after incurring expenses for respondent's medical check-up and, it is credible that, thereafter, respondent was prevented entry into the work premises. This is tantamount to constructive dismissal.

4. ID.; ID.; ID.; ID.; CONSTRUCTIVE DISMISSAL IS A DISMISSAL IN DISGUISE OR AN ACT AMOUNTING TO

DISMISSAL BUT MADE TO APPEAR AS IF IT WERE NOT; CASE AT BAR.— Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. Constructive dismissal is a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not. In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity. We agree with the Court of Appeals that the incredibility of petitioner's submission about abandonment of work renders credible the position of respondent that she was prevented from entering the property. This was even corroborated by the affidavits of Siarot and Mendoza which were made part of the records of this case. The dismissal of respondent places upon petitioner the burden of proof of legality of dismissal. x x x In this case, petitioner, instead of proving the legality of dismissal, relied entirely on the defense of abandonment. When such defense fell and failed, illegal dismissal was left undisputed.

APPEARANCES OF COUNSEL

Batacan Montejo & Vicencio Law Firm for petitioner.
Torreon & De Vera Torreon Law Firm for respondent.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] of the Decision[2] of the Twenty First Division of the Court of Appeals (CA) in CA G.R. SP No. 62700 dated 18 April 2006, granting the Special Civil Action for *Certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure filed by Julia Malasugui

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[1] *Rollo*, pp. 11-34.

[2] Penned by Associate Justice Ramon R. Garcia with Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr., concurring. *Id.* at 35-50.

and reversing the Resolution of the National Labor Relations Commission (NLRC) Fifth Division. The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, the instant petition is **GRANTED**. The **RESOLUTION** dated June 29, 2000 of public respondent National Labor Relations Commission (Fifth Division) is **REVERSED and SET ASIDE**. Private respondent Liza Galang is hereby **ORDERED** to pay petitioner Julia Malasugui the following: salary differential in the amount of ₱19,554.23; 13th month pay differential in the amount of ₱4,620.50; separation pay equivalent to one month salary for every year of continuous service; and full backwages from the time of her illegal dismissal up to the date of finality of this judgment.[3]

Respondent has this story:

On 26 June 1993, Julia Malasugui (Malasugui) was hired by Ma. Melissa A. Galang (Galang) to take care, oversee and man the premises of the Davao Royal Garden Compound (Pangi Property) – the main compound of Galang where the orchids and other ornamental plants used for the business were nursed and propagated. Aside from taking care of the plants, she was required by Galang to be present at the premises at seven thirty in the morning until five thirty in the afternoon every day, including Saturdays, Sundays and Holidays without any day-offs.[4]

Galang would visit the premises at least thrice a week and give her instructions on what to do and what were the things to be prioritized. Among these instructions were tending, watering and spraying with chemicals various orchid varieties, packing the orchids for export purposes and cleaning the surroundings of the half-hectare premises.[5]

From 1993-1995, Malasugui was paid by Galang ₱40.00 as daily wage and after three years, it was increased to ₱70.00

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[3] *Id.* at 49.

[4] Position Paper of the Complainant. CA *rollo*, p. 45.

[5] *Id.* at 46.

per day until February 1999.[6] She was also given one thousand pesos (₱1,000.00) bonus every December by Galang.[7]

Malasugui was later made to stay and live at the premises, particularly in one of the bunk houses within the Pangi property which was vacated by the family driver of Galang, so that she could watch and guard the premises even during nighttime.[8] However, she had to buy her food.[9]

In November 1998, she became sick with severe cough and asked for financial assistance from Galang for medical check-up. The coughing became incessant which prompted Galang to bring her to a doctor and made to undergo a series of examinations including chest radiographic examination. Thereafter, she was terminated from work and barred from entering the Pangi property on 27 January 1999.[10]

The allegations of respondent were corroborated by the neighbors of the Pangi property, namely: Nestor Siarot (Siarot) and Ledwina M. Mendoza (Mendoza).

Siarot in his affidavit attested that he was an employee of PG Lumber, the office of which is adjacent to the Pangi property. He attested that he knows that Malasugui slept within the premises and tended to the plants and orchids, either by watering, cultivating or spraying the same with chemicals; and that Galang is the owner of the Davao Royal Garden and Malasugui received instructions from her.[11]

Mendoza, in turn, confirmed Siarot's statement. She said that she personally knows that Malasugui was an employee of

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[6] Affidavit of the Complainant. *Id.* at 53.

[7] *Id.*

[8] Position Paper of the Complainant. *Id.* at 46.

[9] *Id.*

[10] Position Paper of the Complainant. *Id.*; Complaint of Julia Malasugui. *Id.* at 43.

[11] Affidavit of Nestor Siarot. *Id.* at 51.

Davao Royal Garden, a business establishment engaged in the business of growing of orchids and that in the course of her employment Malasugui was made to stay inside the premises of the Pangi property.[12]

On the other hand is the version of the defense:

Petitioner Galang narrated that she is the owner of Davao Royal Garden, a sole proprietorship engaged in the retailing of ornamental plants, consisting of receiving of cut-flowers from farmers or suppliers, packing them for shipment, and shipping them to the buyers.[13] However, Galang did not hire respondent Malasugui.

Her mother Elsa Galang (Elsa) is an orchid hobbyist who is engaged in the propagation of orchid plants and occasionally sells them to her friends and acquaintances.[14]

In 1993, her family bought a parcel of land at Matini, Pangi, Davao City (Pangi property) on which they intended to construct their family home. While construction was yet to start, Elsa transferred her orchid collection to the Pangi property. There thus was a need to oversee the property and Elsa decided to allow their laundrywoman Aurora Solis (Solis) to stay in one of the bunk houses within the property to take care of the orchid collection. At the same time, Solis would also assist Galang in her business. The other bunkhouse was then occupied by their family driver.[15]

Sometime in 1995, Malasugui visited Solis, a relative by affinity, in the Pangi property. She told Solis of her intention to find a job in the city but she had no place to stay in the meantime. Malasugui could not be hired by the Galang. There was no need for another employee since Solis was already taking care of Elsa's orchid collection and Galang's orchid business.

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[12] Affidavit of Ledwina M. Mendoza, *Id.* at 52.

[13] Position Paper of Ma. Melissa Galang. *Id.* at 92-93.

[14] *Id.* at 93.

[15] *Id.*

However, Malasugui was allowed to stay in the bunkhouse occupied by Solis.[16]

When the family driver left the other bunkhouse, Malasugui occupied it and brought along her family as well. The Galang family tolerated this arrangement for around six years as an act of kindness. During these times, Malasugui did not look for any job as initially intended. They did not require Malasugui to pay for rentals, electricity, water and other utilities.[17]

Solis, on the other hand, asked Malasugui to help out in her tasks of weeding, watering, spraying chemicals on the orchids as well as cleaning the Pangi property. When Galang inquired why Malasugui was doing such tasks, Solis replied that she asked Malasugui to assist her since she and her family were occupying the property. The assistance rendered by Malasugui was in gratitude for the hospitality of the Galang family.[18]

Admittedly, Galang occasionally gave money to Malasugui out of charity. She even answered for the medical expenses of Malasugui when the latter became sick of excessive coughing early in 1999. She even made an arrangement with a radiologist for her diagnostic examination but Malasugui did not show up at the appointed time. When confronted by Galang about this, Malasugui packed her belongings and left the Pangi property. She was not asked nor forced to leave the premises by any member of the Galang family.[19]

Malasugui filed a complaint for illegal dismissal before the National Labor Relations Commission, Regional Arbitration Branch No. XI of Davao City on 8 February 1999 claiming underpayment of wages, holiday pay, separation pay and 13th month differential.[20]

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[16] *Id.*

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

[18] *Id.* at 94.

[19] *Id.*

[20] Complaint of Julia Malasugui. *Id.* at 43.

On 28 September 1999, Labor Arbiter Antonio M. Villanueva rendered judgment[21] finding complainant's charge of illegal dismissal without merit. The dispositive portion reads:

> WHEREFORE, in consideration of all the foregoing, judgment is hereby rendered finding complainant's charge of illegal dismissal without merit but ordering respondents Davao Royal Garden and Melissa Galang to pay jointly and severally the sum of TWENTY FOUR THOUSAND ONE HUNDRED SEVENTY FOUR PESOS AND SEVENTY THREE CENTAVOS (₱24,174.73) to complainant as wage differential and 13th month pay differential.
>
> Ordering the dismissal of the claims for holiday pay and separation pay for lack of merit.[22]

The Labor Arbiter found that Malasugui was hired to work for Galang in relation to her orchid business. Her tasks of assisting Solis in watering, weeding and cleaning the surroundings led the Labor Arbiter to conclude that with the knowledge and acquiescence of Melissa Galang, Malasugui was made "to suffer or permit to work" within the definition of employee under Article 97(e) of the Labor Code. However, the Labor Arbiter ruled that there was no substantial evidence that Malasugui was illegally dismissed and barred from entering the property after she, without any notice to her employer, packed her belongings and left the Pangi property. Respondent was awarded salary differential and 13th month pay but was denied holiday pay.

Galang appealed before the NLRC assailing the finding of the Labor Arbiter that there was an employer-employee relationship between her and Malasugui.

On 29 June 2000, the NLRC affirmed with modification the Decision of the Labor Arbiter. The dispositive portion of the resolution reads:

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[21] *Rollo*, pp. 73-82.

[22] *Id.* at 82.

WHEREFORE, premises laid, the decision appealed from is hereby MODIFIED by deleting the award of salary differentials. The rest of the Labor Arbiter's decision stands.[23]

The NLRC in its Resolution[24] deleted the award of salary differentials on the reason that even though the salary received by the complainant was below that provided by law by Ten Pesos (₱10.00) per day, the non-monetary benefits received by her such as lodging, free water, electricity and telephone, if quantified, will be more than enough to compensate the difference. To do otherwise would result in unjust enrichment on the part of Malasugui to the detriment of Galang.

The Motion for Reconsideration[25] filed by Malasugui was denied by the NLRC in a Resolution dated 29 September 2000.

Aggrieved, Malasugui filed a Special Civil Action for *Certiorari* under Rule 65 of the Revised Rules of Civil Procedure before the CA alleging grave abuse of discretion on the part of NLRC.[26]

The CA granted the petition filed by Malasugui. It ruled that respondent was illegally dismissed by Galang. It reinstated the award of salary differential to Malasugui in addition to the 13th month pay. Further, because of the ruling of illegal dismissal against Galang, the appellate court awarded separation pay to Malasugui for every year of continuous service and full backwages from the time of her dismissal up to the time of the finality of the judgment.

The following are the assignment of errors presented before this Court:

THE COURT *A QUO* ERRED IN DECIDING QUESTIONS OF SUBSTANCE CONTRARY TO LAW AND SETTLED RULINGS OF THE SUPREME COURT IN THE FOLLOWING:

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[23] *Id.* at 104.

[24] *Id.* at 101-105.

[25] CA *rollo*, pp. 70-77.

[26] Special Civil Action for *Certiorari* of Julia Malasugui. *Rollo*, pp. 108-123.

A. THE RESPONDENT [MALASUGUI] WAS ILLEGALLY AND CONSTRUCTIVELY DISMISSED FROM EMPLOYMENT DESPITE ABSENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP AND THEREFORE ENTITLED TO SEPARATION PAY AND BACKWAGES.

B. THE CONCLUSIONS REACHED BY THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE LABOR ARBITER AND NATIONAL LABOR RELATIONS COMMISSION AND ARE MERE CONCLUSIONS PREMISED ON ERRONEOUS ASSUMPTIONS OF FACTS NOT BORNE OUT OF THE RECORD.[27]

The basic issues are, first, whether or not Malasugui is an employee of Galang; and second if she is an employee, whether or not Malasugui was constructively dismissed.

All three, Labor Arbiter, the NLRC and the CA ruled that there was an employer-employee relationship between Galang and Malasugui. We do not see any reason to rule otherwise. This Court is not a trier of facts and does not routinely undertake the re-examination of the evidence presented by the contending parties for the factual findings of the labor officials who have acquired expertise in their own fields are accorded respect and even finality if affirmed on appeal to the Court of Appeals.[28]

Such principle cannot, however, apply to the finding of illegal dismissal against Galang. The Labor Arbiter and the NLRC both ruled that there was no illegal dismissal, but the Court of Appeals reversed such findings. We find a need to look into the decision of the CA.

When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

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[27] *Id.* at 21-22.

[28] *Ledesma, Jr. v. NLRC*, G.R. No. 174585, 19 October 2007, 537 SCRA 358, 366.

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
(2) When the inference made is manifestly mistaken, absurd or impossible;
(3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
(7) When the findings are contrary to those of the trial court [in this case the administrative bodies of Labor Arbiter and NLRC];
(8) When the findings of fact 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 petitioners' main and reply briefs are not disputed by the respondents; and
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (Emphasis and underscoring supplied)[29]

That said and done, we conclude that there was indeed an illegal dismissal of the respondent by the petitioner.

We proceed from the premises that (1) as found by the labor arbiter, the NLRC and the CA, there is an employer-employee relationship between petitioner and respondent; and (2) it is a fact that there was a severance of employment.

The dispute is on the reason for the severance. Petitioner pleads that there was abandonment. Respondent, as she had charged petitioner at the outset, submits that there was illegal dismissal.

Jurisprudence provides that the burden of proof to show that the dismissal was for a just cause is on the employer.

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[29] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, 6 June 2011, 650 SCRA 656, 660.

Petitioner alleged that respondent packed her bags and left the property after being scolded due to her non-appearance at the medical examination arranged by the petitioner. The submission is that respondent left the premises and abandoned her work.

Abandonment is a form of neglect of duty, one of the just causes for an employer to terminate an employee. It is a hornbook precept that in illegal dismissal cases, the employer bears the burden of proof. For a valid termination of employment on the ground of abandonment, the employer must prove, by substantial evidence, the concurrence of the employee's failure to report for work for no valid reason and his categorical intention to discontinue employment.[30]

There is in this case no substantial evidence that will prove respondent's categorical intention to discontinue employment. On the contrary, the story of abandonment is simply doubtful. The Court of Appeals was correct in ruling that:

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It is not in accord with normal human experience and too flimsy a reason for petitioner so circumstanced, to just pack up her things and vacate the Pangi property after being queried on why she did not show up at the appointed time with the radiologist. The allegation that private respondent was displeased after incurring expenses for petitioner's medical check-up remained unrebutted. Hence, petitioner's testimony that she was prevented entry into the Pangi property appeared more credible.

x x x x x x x x x[31]

Respondent has been in the employ of petitioner for six years when the alleged abandonment happened. Being scolded, if it were true, is hardly a reason for a gardener of six years to just pack up and leave the work premises where she was even allowed to reside, at a time when she was ill and needed medical

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[30] *Martinez v. B&B Fish Broker,* G.R. No. 179985, 18 September 2009, 600 SCRA 691, 696.

[31] *Rollo,* p. 44.

attention. Indeed, the alleged scolding is itself incredible. The given reason was that respondent failed to show up at her arranged appointment with the radiologist. It is hard to believe that a sick gardener, certainly of minimal means, would refuse the offer of medical services. In fact, the basic allegation in respondent's complaint for illegal dismissal was that petitioner's "treatment to her became sour especially when she requested that she be examined by a doctor for her cough."[32] And, completely belying the petitioner's assertion that respondent failed to show up at the appointed time with the radiologist are two certificates issued by Radiologist Susan R. Gaspar stating that on 30 January 1999 and on 1 February 1999 respondent had her chest x-ray taken at the Radiology Section of the Polyclinic Davao.[33]

In the case of *Garcia v. NLRC* correctly relied upon by the Court of Appeals, we emphasized that there must be a *concurrence of the intention to abandon and some overt acts* from which an employee may be deduced as having no more intention to work.[34] Such intent to discontinue the employment must be *shown by clear proof that it was deliberate and unjustified.*[35]

In the instant case, the overt act relied upon by petitioner is not only a doubtful occurrence but is, if it did transpire, even consistent with the dismissal from employment posited by the respondent. The factual appraisal of the Court of Appeals is correct. Petitioner was displeased after incurring expenses for respondent's medical check-up and, it is credible that, thereafter, respondent was prevented entry into the work premises. This is tantamount to constructive dismissal.[36]

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[32] *Id.* at 46.

[33] *Id.* at 42.

[34] 372 Phil. 482, 493 (1999).

[35] *Id.*

[36] *Id.*

Constructive dismissal exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay.[37] Constructive dismissal is a dismissal in disguise or an act amounting to dismissal but made to appear as if it were not.[38] In constructive dismissal cases, the employer is, concededly, charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity.[39]

We agree with the Court of Appeals that the incredibility of petitioner's submission about abandonment of work renders credible the position of respondent that she was prevented from entering the property. This was even corroborated by the affidavits of Siarot and Mendoza which were made part of the records of this case.

The dismissal of respondent places upon petitioner the burden of proof of legality of dismissal.

In *AMA Computer College-East Rizal v. Ignacio*[40] as reiterated in *Gurango v. Best Chemicals and Plastics, Inc.*,[41] the Court ruled that:

> In termination cases, the burden of proof rests on the employer to show that the dismissal is for just cause. When there is no showing of a clear, valid and legal cause for the termination of employment,

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[37] *Endico v. Quantum Foods Distribution Center*, G.R. No. 161615, 30 January 2009, 577 SCRA 299, 310 citing *Blue Dairy Corporation v. NLRC*, 373 Phil. 179, 186 (1999).

[38] *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, G.R. No. 154503, 29 February 2008, 547 SCRA 220, 236.

[39] *Philippine Veterans Bank v. National Labor Relations Commission (Fourth Division)*, G.R. No. 188882, 30 March 2010, 617 SCRA 204, 212.

[40] G.R. No. 178520, 23 June 2009, 590 SCRA 633.

[41] G.R. No. 174593, 25 August 2010, 629 SCRA 311.

the law considers the matter a case of illegal dismissal and the burden is on the employer to prove that the termination was for a valid or authorized cause. And the quantum of proof which the employer must discharge is substantial evidence. An employee's dismissal due to serious misconduct must be supported by substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[42]

In this case, petitioner, instead of proving the legality of dismissal, relied entirely on the defense of abandonment. When such defense fell and failed, illegal dismissal was left undisputed.

Having disposed of the basic issues and found that there is an employee-employer relationship between the parties and that respondent was illegally dismissed, the rest of the disposition of the Court of Appeals will have to be, consequently, affirmed.

WHEREFORE, the appeal is **DENIED**. The 18 April 2006 Decision of the Court of Appeals in CA G.R. SP No. 62700 is hereby **AFFIRMED** *in toto*. No cost.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.*, concur.

[42] *AMA Computer College-East Rizal v. Ignacio, supra* note 40 at 651-652.

THIRD DIVISION

[G.R. No. 174792. March 7, 2012]

WILFREDO ARO, RONILO TIROL, JOSE PACALDO, PRIMITIVO CASQUEJO and MARCIAL ABGO, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION and BENTHEL DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHERE THE PETITION WAS GIVEN DUE COURSE DESPITE ITS LATE FILING.— Under Rule 65, a petition for *certiorari* may be filed not later than sixty (60) days from notice of the judgment, order or resolution, or in this case, not later than October 3, 2006. However, the present petition is dated October 7, 2006 and as it appears on the records, this Court received the said petition on October 17, 2006. Thus, on its face and in reality, the present petition was filed out of time, whether it be under Rule 45 or Rule 65 of the Rules of Court. Nevertheless, this Court did not dismiss the present petition and required private respondent to file its Comment. Consequently, a Reply from petitioners and eventually, both parties' respective memorandum were filed. In view of that premise and in the interest of justice, this Court shall forego the technicalities and is constrained to resolve the present petition as a petition for *certiorari* under Rule 65, since the main issue raised by petitioners is whether or not the CA committed grave abuse of discretion which amounted to lack or excess of its jurisdiction.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROJECT EMPLOYEES; WHERE EMPLOYEES WERE HIRED TO CARRY OUT SPECIFIC PROJECT; BENEFITS GRANTED TO ILLEGALLY DISMISSED PROJECT EMPLOYEES.— [T]his Court agrees with the findings of the CA that petitioners were project employees. It is not disputed that petitioners were hired for the construction of the Cordova Reef Village Resort in Cordova, Cebu. By the

> nature of the contract alone, it is clear that petitioners' employment was to carry out a specific project. x x x Therefore, being project employees, petitioners are only entitled to full backwages, computed from the date of the termination of their employment until the actual completion of the work. Illegally dismissed workers are entitled to the payment of their salaries corresponding to the unexpired portion of their employment where the employment is for a definite period. In this case, as found by the CA, the Cordova Reef Village Resort project had been completed in October 1996 and private respondent herein had signified its willingness, by way of concession to petitioners, to set the date of completion of the project as March 18, 1997; hence, the latter date should be considered as the date of completion of the project for purposes of computing the full backwages of petitioners.

APPEARANCES OF COUNSEL

Clumacs Consulting & Litigation Offices for petitioners.
Law Firm of Raymundo A. Armovit for private respondent.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated October 7, 2006, of petitioners Wilfredo Aro, Ronilo Tirol, Jose Pacaldo, Primitivo Casquejo and Marcial Abgo, seeking to reverse and set aside the Decision[1] dated March 7, 2006, and Resolution[2] dated July 27, 2006, of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 01012 which reversed the Decision and Resolution dated June 25, 2004 and June 30, 2005, respectively, of the National Labor Relations Commission (NLRC).

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[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Brusela, Jr., concurring; *rollo*, pp. 19-28.

[2] *Rollo*, pp. 30-31.

The facts, as culled from the records, are the following:

Several employees of private respondent Benthel Development Corporation, including the petitioners, filed a Complaint for illegal dismissal with various money claims and prayer for damages against the latter, in the NLRC Arbitration Branch No. VII in Cebu City and docketed as RAB Case No. 07-09-1222-97/12-1609-97. Thereafter, Labor Arbiter Ernesto F. Carreon rendered a decision finding private respondent guilty of illegal dismissal and ordering it to pay its thirty-six (36) employees ₱446,940.00 as separation pay.

The employees, including the petitioners herein, appealed from the said decision. The NLRC, in NLRC Case No. V-000399-98, affirmed the decision of Labor Arbiter Carreon in its Decision dated January 12, 1999, with the modification that private respondent pay backwages computed from the respective dates of dismissal until finality of the decision.

Private respondent, unsatisfied with the modification made by the NLRC, filed a motion for reconsideration with the contention that, *since it has been found by the Labor Arbiter and affirmed in the assailed decision that the employees were project employees, the computation of backwages should be limited to the date of the completion of the project and not to the finality of the decision*. The NLRC, however, denied the motion ruling that private respondent failed to establish the date of the completion of the project.

Aggrieved, private respondent filed a Petition for *Certiorari* with the CA, docketed as CA-G.R. SP No. UDK 3092 assailing the January 12, 1999 decision of the NLRC and the denial of its motion for reconsideration which was dismissed for non-payment of docket fees and insufficiency of form. It filed a motion for reconsideration, but the latter was also denied.

Thus, private respondent filed with this Court, docketed as G.R. No. 144433 a Petition for Review on *Certiorari*. In a Resolution dated September 20, 2000, this Court denied the petition for having been filed out of time and for non-payment of docket and other lawful fees.

The employees, including the petitioners, upon the finality of this Court's resolution, filed a Motion for Execution before the Labor Arbiter of the January 12, 1999 decision. Thereafter, the Labor Arbiter ordered for the issuance of a writ of execution directing the computation of the awards.

Afterwards, private respondent filed an appeal from the said Order with an urgent prayer for the issuance of a temporary restraining order and/or preliminary injunction with public respondent NLRC. The said appeal was denied. The NLRC held that the appeal was premature, there having been no computation yet made by the Labor Arbiter as to the exact amount to be paid to the employees. Public respondent remanded the case to the arbitration branch for appropriate action.

Labor Arbiter Carreon inhibited himself from further proceedings in the case upon motion of private respondent. In the meantime, fifteen (15) employees have executed Affidavits of Full Settlement after having settled amicably with the private respondent. Labor Arbiter Violeta Ortiz-Bantug issued an Order dated July 31, 2003 for the issuance of a writ of execution only for the payment of the claims of the twenty-one (21) remaining employees in the total amount of ₱4,383,225.00, which included attorney's fees equivalent to ten (10%) percent of the sum received as settlement by the fifteen (15) employees who had earlier settled with the private respondent.

Private respondent appealed to public respondent NLRC contending that the computation for backwages must be only until the completion of the project and not until the finality of the decision. Public respondent, in its Decision dated June 25, 2004, affirmed the Order of Labor Arbiter Bantug, but reduced the total amount to ₱4,073,858.00, inclusive of attorney's fees. Thereafter, private respondent filed a motion for reconsideration of the June 25, 2004 decision which was denied by the public respondent, but not before the admittance of the affidavits of withdrawal, release/waiver and quitclaim executed by another group of fourteen (14) employees, leaving unresolved only the claims of the petitioners herein. Thus, in the resolution of the

private respondent's motion for reconsideration, the award was reduced to the sum of ₱1,374,339.00, inclusive of attorney's fees.

As a recourse, private respondent filed a petition for *certiorari* with the CA, alleging that public respondent committed grave abuse of discretion in promulgating its assailed decision and denying its motion for reconsideration. The CA granted the petition, therefore, annulling and setting aside the decision and resolution of the NLRC as to the award for backwages and remanded the case to the same public respondent for the proper computation of the backwages due to each of the petitioners herein. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case. The assailed Decision and Resolution dated June 04, 2004 (sic) and June 30, 2005, respectively, issued by the public respondent in NLRC Case No. V-000586-2003 are hereby ANNULLED and SET ASIDE as to the award for backwages granted to the seven private respondents named in the petition at bench.
>
> The case is hereby remanded to the public respondent for the proper computation of the backwages due to each of the said seven private respondents, computed until March 18, 1997.
>
> SO ORDERED.[3]

Hence, the present petition.

Petitioners assigned the following errors:

GROUND/ASSIGNMENT OF ERRORS

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT OVERTURNED ITS OWN DECISION AND THAT OF THE SUPREME COURT.

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN DECLARING THAT PETITIONERS ARE PROJECT EMPLOYEES, CONSIDERING THAT THE NLRC 4TH DIVISION HAD LONG RULED THAT SAID EMPLOYEES ARE IN FACT

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[3] *Id.* at 27.

REGULAR EMPLOYEES AND WHICH RULING WAS LONG CONFIRMED AND AFFIRMED NOT ONLY BY THE COURT OF APPEALS BUT BY THE SUPREME COURT ITSELF.

THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT REFUSED TO RULE ON THE INVALIDITY OF THE RELEASE AND QUITCLAIMS EXECUTED BY SOME OF THE EMPLOYEES WITHOUT THE ASSISTANCE OF COUNSEL.[4]

In its Comment[5] dated January 24, 2007, private respondent stated the following counter-arguments:

1. The issues presented in CA-G.R. SP No. UDK 3092 and SC G.R. No. 144433 are not the same issues recently raised in the Petition for *Certiorari* before the Court of Appeals.

2. There is no final and executory ruling that herein petitioners were regular employees and not just project employees.[6]

First of all, this Court has to address the nature of the petition filed by petitioners. As pointed out by private respondent, and not disputed by petitioners, the present petition was filed out of time. Petitioners received, on August 4, 2006, a copy of the CA Resolution dated July 27, 2006. The period within which to file a petition for review under Rule 45 is within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or from the denial of the petitioners' motion for new trial or reconsideration filed in due time after notice of the judgment, or in this case, not later than August 19, 2006. Under Rule 65, a petition for *certiorari* may be filed not later than sixty (60) days from notice of the judgment, order or resolution, or in this case, not later than October 3, 2006. However, the present petition is dated October 7, 2006 and as it appears on the records, this Court received the said petition on October 17, 2006. Thus, on its face and in reality, the present petition was filed out of time, whether it be under Rule 45 or Rule 65 of the

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[4] *Id.* at 11.

[5] *Id.* at 302-304.

[6] *Id.* at 315.

Rules of Court. Nevertheless, this Court did not dismiss the present petition and required private respondent to file its Comment. Consequently, a Reply from petitioners and eventually, both parties' respective memorandum were filed. In view of that premise and in the interest of justice, this Court shall forego the technicalities and is constrained to resolve the present petition as a petition for *certiorari* under Rule 65, since the main issue raised by petitioners is whether or not the CA committed grave abuse of discretion which amounted to lack or excess of its jurisdiction.

Petitioners argue that the CA should have dismissed private respondent's petition, since there was already a finality of the judgment of the NLRC. It is not disputed that on January 31, 2000, the CA, through its 17th Division, issued a Resolution dismissing private respondent's petition for *certiorari* (docketed as CA-G.R. SP No. UDK 3092. Subsequently, the same private respondent filed a motion for reconsideration, which was denied by the CA in its Resolution dated June 8, 2000. Not contented, private respondent filed a petition with this Court, which the latter denied, through its Second Division (G.R. No. 144433), in its Resolution dated September 20, 2000. Still aggrieved, private respondent filed a second motion for reconsideration, which was dismissed by this Court. Thus, according to petitioners, there was already a finality of judgment.

On the other hand, private respondent insists that the inequitable, nay illegal, in a decision cannot lapse into finality, referring to the computation of the backwages which is not commensurate to the factual findings of the Labor Arbiter and the NLRC. Basically, according to private respondent, the CA merely sought to correct the NLRC's and the Labor Arbiter's one-sided and blind adherence to and/or misguided application of strict technical rules, and their overzealous partiality in favor of labor. Private respondent further claims that the issues presented in their earlier petitions with the CA and this Court (CA-G.R. SP No. UDK 3092 and SC G.R. No. 144433, respectively) are not the same issues raised in the petition for *certiorari* later filed with the CA and the decision of which is now the subject of herein petition. Private respondent clarifies

that there is no final and executory ruling that petitioners were regular and not just project employees, hence, there was a need to file a petition with the CA.

The issue as to whether petitioners were project employees or regular employees is factual in nature. It is well-settled in jurisprudence that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.[7] Section 5, Rule 133 of the Rules of Court, defines substantial evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." Consistent therewith is the doctrine that this Court is not a trier of facts, and this is strictly adhered to in labor cases.[8] We [this Court] may take cognizance of and resolve factual issues, only when the findings of fact and conclusions of law of the Labor Arbiter or the NLRC are inconsistent with those of the CA.[9] In the present case, the NLRC and the CA have opposing views.

According to the CA, petitioners are project employees as found by Labor Arbiter Ernesto Carreon in his Decision dated May 28, 1998, because they were hired for the construction of the Cordova Reef Village Resort in Cordova, Cebu, which was later on affirmed by the NLRC in its January 12, 1999 decision. The only discrepancy is the Order of the NLRC that petitioners are entitled to backwages up to the finality of its decision, when as project employees, private respondents are only entitled to payment of backwages until the date of the completion of the project. In a later resolution on private respondent's motion

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[7] *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation,* G.R. No. 170351, March 30, 2011, citing *G&M (Phils.), Inc. v. Cruz,* 496 Phil. 119, 123-124 (2005).

[8] *Id.,* citing *PCL Shipping Philippines, Inc. v. NLRC,* G.R. No. 153031, December 14, 2006, 511 SCRA 44, 54.

[9] *Id.*

for reconsideration of its January 12, 1999 decision, the NLRC changed its findings by ruling that petitioners herein were regular employees and, therefore, entitled to full backwages, until finality of the decision, citing that petitioners' repeated rehiring over a long span of time made them regular employees.

Article 280 of the Labor Code distinguishes a "project employee" from a "regular employee," thus:

> Article 280. *Regular and Casual Employment* – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the 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 service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

In *Hanjin Heavy Industries and Construction Co. Ltd. v. Ibañez*,[10] this Court extensively discussed the above distinction, thus:

> x x x [T]he principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees" is whether or not the project employees were assigned to carry out a "specific project or undertaking," the duration and scope of which were specified at the time the employees were engaged for that project.[11]

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[10] G.R. No. 170181, June 26, 2008, 555 SCRA 537, 550-552.

[11] *ALU-TUCP v. National Labor Relations Commission*, G.R. No. 109902, August 2, 1994, 234 SCRA 678, 685.

In a number of cases,[12] the Court has held that the length of service or the re-hiring of construction workers on a project-to-project basis does not confer upon them regular employment status, since their re-hiring is only a natural consequence of the fact that experienced construction workers are preferred. Employees who are hired for carrying out a separate job, distinct from the other undertakings of the company, the scope and duration of which has been determined and made known to the employees at the time of the employment, are properly treated as project employees and their services may be lawfully terminated upon the completion of a project.[13] Should the terms of their employment fail to comply with this standard, they cannot be considered project employees.

In *Abesco Construction and Development Corporation v. Ramirez*,[14] which also involved a construction company and its workers, this Court considered it crucial that the employees were informed of their status as project employees:

> The principal test for determining whether employees are "project employees" or "regular employees" is whether they are assigned to carry out a specific project or undertaking, the duration and scope of which are specified at the time they are engaged for that project. Such duration, as well as the particular work/service to be performed, is defined in an employment agreement and is made clear to the employees at the time of hiring.
>
> In this case, petitioners did not have that kind of agreement with respondents. Neither did they inform respondents of the nature of the latter's work at the time of hiring. Hence, for

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[12] *Abesco Construction and Development Corporation v. Ramirez,* G.R. No. 141168, April 10, 2006, 487 SCRA 9, 14; *Filipinas Pre-Fabricated Building System (Filsystem), Inc. v. Puente,* G.R. No. 153832, March 18, 2005, 453 SCRA 820, 826; *Cioco, Jr. v. C.E. Construction Corporation,* G.R. Nos. 156748 and 156896, September 8, 2004, 437 SCRA 648, 652; *D.M. Consunji, Inc. v. National Labor Relations Commission,* 401 Phil. 635, 641 (2000).

[13] *Grandspan Development Corporation v. Bernardo,* G.R. No. 141464, September 21, 2005, 470 SCRA 461, 470; *ALU-TUCP v. National Labor Relations Commission, supra* note 11.

[14] *Supra* note 12, at 14-15.

failure of petitioners to substantiate their claim that respondents were project employees, we are constrained to declare them as regular employees.

In *Caramol v. National Labor Relations Commission*,[15] and later reiterated in *Salinas, Jr. v. National Labor Relations Commission*,[16] the Court markedly stressed the importance of the employees' knowing consent to being engaged as project employees when it clarified that "there is no question that stipulation on employment contract providing for a fixed period of employment such as "project-to-project" contract is valid provided the period was agreed upon knowingly and voluntarily by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent x x x."

Applying the above disquisition, this Court agrees with the findings of the CA that petitioners were project employees. It is not disputed that petitioners were hired for the construction of the Cordova Reef Village Resort in Cordova, Cebu. By the nature of the contract alone, it is clear that petitioners' employment was to carry out a specific project. Hence, the CA did not commit grave abuse of discretion when it affirmed the findings of the Labor Arbiter. The CA correctly ruled:

A review of the facts and the evidence in this case readily shows that a finding had been made by Labor Arbiter Ernesto Carreon, in his decision dated May 28, 1998, that complainants, including private respondents, are project employees. They were hired for the construction of the Cordova Reef Village Resort in Cordova, Cebu. We note that no appeal had been made by the complainants, including herein private respondents, from the said finding. Thus, that private respondents are project employees has already been effectively established.

Likewise, a review of the public respondent's January 12, 1999 decision shows that it affirmed the labor arbiter's finding of the private respondents' being project employees.

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[15] G.R. No. 102973, August 24, 1993, 225 SCRA 582, 586.

[16] G.R. No. 114671, November 24, 1999, 319 SCRA 54, 61.

We therefore cannot fathom how the public respondent could have ordered backwages up to the finality of its decision when, as project employees, private respondents are only entitled to payment of the same until the date of the completion of the project. It is settled that, without a valid cause, the employment of project employees cannot be terminated prior to expiration. Otherwise, they shall be entitled to reinstatement with full backwages. However, if the project or work is completed during the pendency of the ensuing suit for illegal dismissal, the employees shall be entitled only to full backwages from the date of the termination of their employment until the actual completion of the work.

While it may be true that in the proceedings below the date of completion of the project for which the private respondents were hired had not been clearly established, it constitutes grave abuse of discretion on the part of the public respondent for not determining for itself the date of said completion instead of merely ordering payment of backwages until finality of its decision.

x x x x x x x x x

The decision of the labor arbiter, as affirmed by the public respondent in its January 12, 1999 decision, clearly established that private respondents were project employees. Because there was no showing then that the project for which their services were engaged had already been completed, the public respondent likewise found that private respondents were illegally dismissed and thus entitled to backwages.

However, in utter disregard of the law and prevailing jurisprudence, the public respondents capriciously and arbitrarily ordered that the said backwages be computed until the finality of its decision instead of only until the date of the project completion. In grave abuse of its discretion, the public respondent refused to consider the evidence presented before it as to the date of completion of the Cordova Reef Village Resort project. The records show that affidavits have been executed by the petitioner's manager, corporate architect and project engineer as to the fact of the completion of the project in October 1996. As these evidences [sic] were already a matter of record, the public respondent should not have closed its eyes and should have endeavored to render a correct and just judgment.

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Furthermore, as earlier noted, private respondents did not appeal from the Labor Arbiter's findings that they were indubitably project employees. However, they were entitled to the payment of separation pay only for the reason that the date of the completion of the project for which they were hired had not been clearly established. Thus, in affirming the labor arbiter's decision, the public respondent in effect sustained the finding that private respondents are project employees. The statement, therefore, contained in the resolution of the petitioner's motion for reconsideration of its January 12, 1999 decision that repeated rehiring makes the worker a regular employee, is at best an *obiter*, especially considering that such conclusion had not been shown to apply to the circumstances then obtaining with the private respondents' employment with the petitioner.[17]

Therefore, being project employees, petitioners are only entitled to full backwages, computed from the date of the termination of their employment until the actual completion of the work. Illegally dismissed workers are entitled to the payment of their salaries corresponding to the unexpired portion of their employment where the employment is for a definite period.[18] In this case, as found by the CA, the Cordova Reef Village Resort project had been completed in October 1996 and private respondent herein had signified its willingness, by way of concession to petitioners, to set the date of completion of the project as March 18, 1997; hence, the latter date should be considered as the date of completion of the project for purposes of computing the full backwages of petitioners.

As to the issue that the CA committed grave abuse of discretion in refusing to rule on the invalidity of the release and quitclaims executed by some of the employees other than the petitioners, such is inconsequential as those employees are not parties in the present case.

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[17] *Rollo*, pp. 23-26. (Citations omitted.)

[18] *Vinta Maritime Co., Inc. v. NLRC*, G.R. No. 113911, January 23, 1998, 284 SCRA 656, 672, citing *Better Buildings, Inc. v. NLRC*, G.R. No. 109714, December 15, 1997, 283 SCRA 242.

WHEREFORE, the Petition for Review dated October 7, 2006, of petitioners Wilfredo Aro, Ronilo Tirol, Jose Pacaldo, Primitivo Casquejo and Marcial Abgo is hereby **DENIED**. Consequently, the Decision dated March 7, 2006 and Resolution dated July 27, 2006 of the Court of Appeals are hereby **AFFIRMED** *in toto*.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 182522. March 7, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL T. ADALLOM,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CONCLUSIVENESS OF THE FACTUAL FINDINGS OF THE TRIAL COURTS ESPECIALLY WHEN AFFIRMED BY THE APPELATE COURT; APPLICATION.— Jurisprudence dictates that "when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this

Court." We find no cogent reason to deviate from the cited case doctrine. As aptly appreciated by the RTC, prosecution witnesses Babelito and Diorito both positively identified accused-appellant as the person who treacherously shot Danilo and Babelito, and ultimately succeeded in killing Danilo. Said witnesses gave a forthright and consistent narration of what they had actually witnessed the early morning of October 28, 2001 at Senatorial Road.

2. ID.; ID.; DEFENSES OF DENIAL AND ALIBI, NOT PROVEN.— In contrast, accused-appellant proffered the defenses of denial and alibi, which are the weakest of defenses in criminal cases. The well-established rule is that denial and alibi are self-serving negative evidence; they cannot prevail over the spontaneous, positive, and credible testimonies of the prosecution witnesses who pointed to and identified the accused-appellant as the malefactor. "Indeed, alibi is easy to concoct and difficult to disprove." Although accused-appellant presented other witnesses to supposedly corroborate his alibi, we could not ascribe much probative weight to said witnesses' testimonies. None of said witnesses actually saw the shooting, most only heard the gunshots and arrived at the scene after the shooting took place and, thus, had no personal knowledge of the said incident. Except for Aida, no other witness for the defense was physically with accused-appellant at the exact time of the shooting. And even Aida's testimony is unreliable given the observation of the RTC that it is in conflict with that of accused-appellant.

3. CRIMINAL LAW; MURDER; PENALTY AND CIVIL LIABILITY.— The penalty prescribed by law for the crime of murder is *reclusion perpetua to death*. With the repeal of the death penalty law, the only penalty prescribed by law for the crime of murder is *reclusion perpetua*. The Indeterminate Sentence Law does not apply, *inter alia*, to persons convicted of offenses punished with death penalty or life imprisonment, including *reclusion perpetua*. Hence, accused-appellant has been properly sentenced to suffer the penalty of *reclusion perpetua* for the murder of Danilo in Criminal Case No. Q-01-105875. However, we find it necessary to modify the award of damages to Danilo's heirs in Criminal Case No. Q-01-105875.

Consistent with prevailing case law, accused-appellant must pay Danilo's heirs the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, in addition to the sum of ₱57,084.80 as actual damages.

4. ID.; ATTEMPTED MURDER; PENALTY AND CIVIL LIABILITY.— For the crime of attempted murder, the penalty shall be *prision mayor*, since Article 51 of the Revised Penal Code states that a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony. Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code. Absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *prision mayor* in its medium term, which has a duration of eight (8) years and one (1) day to ten (10) years; and that the minimum should be within the range of *prision correccional*, which has a duration of six (6) months and one (1) day to six (6) years. Hence, we sentence accused-appellant to suffer imprisonment from six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, for the attempted murder of Babelito in Criminal Case No. Q-01-105877. We further order accused-appellant to pay Babelito the amounts of ₱25,000.00 as civil indemnity, ₱10,000.00 as moral damages, and ₱25,000.00 as exemplary damages in Criminal Case No. Q-01-105877.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Ponce Enrile Reyes & Manalastas for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a review on appeal of the Decision[1] dated July 31, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00365, which affirmed *in toto* the Decision[2] dated December 15, 2003 by the Regional Trial Court (RTC), Branch 76, Quezon City, in Criminal Case Nos. Q-01-105875 and Q-01-105877, finding accused-appellant Noel T. Adallom guilty beyond reasonable doubt of the crimes of murder and attempted murder.

Accused-appellant was originally charged with two (2) counts of murder and one (1) count of attempted murder under the following Informations:

Criminal Case No. Q-01-105875

That on or about the 28th day of October 2001, in Quezon City, Philippines, the above-named accused, conspiring, confederating with two other persons whose true names and other personal circumstances have not as yet been ascertained and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified with evident premeditation and treachery, taking advantage of superior strength, assault, attack and employ personal violence upon the person of DANILO VILLAREAL *y* ESPIRAS by then and there shooting him with the use of a firearm hitting him on the different parts of his body, thereby inflicting upon him serious and mortal gunshot wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Danilo Villareal *y* Espiras.[3]

Criminal Case No. Q-01-105876

That on or about the 28th day of October 2001, in Quezon City, Philippines, the above-named accused, conspiring, confederating with

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Enrico A. Lanzanas with Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente, concurring.

[2] Records, pp. 198-228; penned by Judge Monina A. Zenarosa.

[3] *Id.* at 2.

two other persons whose true names and other personal circumstances have not as yet been ascertained and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified with evident premeditation and treachery, taking advantage of superior strength, assault, attack and employ personal violence upon the person of ROMMEL HINA by then and there shooting him with the use of a firearm hitting the latter on the head, thereby inflicting upon him serious and mortal gunshot wound which was the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Rommel Hina.[4]

Criminal Case No. Q-01-105877

That on or about the 28th day of October [2001], in Quezon City, Philippines, the above-named accused, conspiring, confederating with two other persons whose true names and identities have not as yet been ascertained and mutually helping one another, with intent to kill, qualified with evident premeditation, treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously commence the commission of the crime of murder directly by overt acts, by then and there shooting one BABELITO E. VILLAREAL with the use of a firearm but said accused were not able to perform all the acts of execution which should produce the crime of murder by reason of some cause or accident other than their own spontaneous desistance, that is complainant was able to ran away, to the damage and prejudice of the said offended party.[5]

When arraigned on January 15, 2002, accused-appellant pleaded not guilty to the charges against him.[6]

At the pre-trial conference on January 29, 2002, the parties stipulated only as to the deaths of Danilo Villareal (Danilo) and Rommel Hina (Rommel).[7]

Thereafter, trial ensued.

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[4] *Id.* at 8.

[5] *Id.* at 14.

[6] *Id.* at 42.

[7] *Id.* at 47.

The prosecution presented four witnesses, namely: Babelito Villareal (Babelito),[8] Danilo's brother who survived the shooting; Janita Villareal (Janita),[9] Danilo's wife; Dr. Joselito Rodrigo (Joselito),[10] the Chief Medico Legal of the Philippine National Police (PNP) Crime Laboratory who examined Danilo's cadaver; and Diorito Coronas, Jr. (Diorito),[11] who was present at the time and place of the shooting.

Below are the testimonies of Babelito and Diorito as summarized by the RTC:

Prosecution witness **Babelito Villareal**, a construction worker and residing at 120 Senatorial Road, Barangay Batasan Hills, Quezon City, testified that he was with his brother, Danilo, and Rommel Hina, a neighbor, towards midnight of October 27, 2001 in front of the store of his sister, Nanieta. His house was just across the street. They were drinking beer but ran out of it. Danilo asked Rommel Hina to buy cigarettes from a nearby store because their sister's store was already closed. When Hina returned, they stayed in the same place. Babelito had his back against the wall fronting the road while he was facing his brother's back. Hina was on his right side. Soon a tricycle with its lights out and its engine turned off, arrived. It was still moving because the road was on a downward slope. He saw Noel Adallom alight from the sidecar. Adallom was with Johnwayne Lindawan and a tricycle driver. After Adallom alighted, he fired his carbine. There was a successive burst of gunfire and Adallom was saying, "*Ano*? *Ano*?" His brother went down and Rommel Hina was moaning. The tricycle came from his left side. When Adallom fired his gun, Danilo turned his head and tried to run but he was hit at the back. He himself, when he saw the gunfire just closed his eyes and leaned against the wall and turned his head to the right and moved his leg downward just waiting for what would happen next. When his brother and Rommel fell, the firing stopped and when he turned his head, he noticed that Adallom upon seeing him alive, again fired successive shots and then he heard, "*tak-tak*." The gun must

[8] TSN, February 18, 2002 and March 4, 2002.

[9] TSN, April 15, 2002 and April 22, 2002.

[10] TSN, April 22, 2002 and June 10, 2002.

[11] TSN, July 29, 2002 and September 2, 2002.

have jammed then he heard another burst of gunfire, "*rat-tat-tat*." He sought cover beside a vehicle and ran. He showed some pictures and pointed to the place he testified on (see Exhibit A). There were bullet marks shown in the pictures (Exhibit B). He ran to an alley and then he went back to Senatorial Road where the incident happened and saw people milling around. His brother was already dead while Rommel Hina was rushed to the hospital. Noel Adallom, a long time resident of their place is the cousin of the husband of his sister while Johnwayne Lindawan is the son of his brother-in-law. During the wake of his brother, he saw Johnwayne with a new haircut. Adallom also had a new haircut. They used to have long hair prior to the incident. Both of them were sporting army cut. He tried to watch Adallom's movements. He saw him fixing the gate of his house and when he could not take it anymore he told Jeanette, the wife of his brother Danilo Villareal, that what Adallom was doing was very insulting. He did not give any statement to the police because there was still the wake and he wanted to consult Jeanette who was very confused. He knows that it is hard to fight an Ifugao. After the funeral, he told his siblings about the incident. They decided to have Adallom arrested. His Ate Jeanette went to Station 6 but the police were not cooperative and he was losing heart. On November 19, 2001, he saw Adallom alight in front of his house. He asked his siblings to go to the *barangay* hall while he waited for Adallom because he might leave. When the barangay people came, they picked him up and informed him about the complaint against him. Adallom was detained at the *barangay* hall and taken at Station 6. Babelito executed a *sinumpaang salaysay* marked Exhibit C.

On cross examination, among others, he said that Adallom's house is just near the *eskinita*. The following day when he saw Adallom sporting a new haircut, he tried to keep track of his movements. He did that for several days. He was shown a sketch marked as Exhibit D for the prosecution and said, the house of his sister was along Senatorial Road at the corner of an alley in Avocado Street. After Adallom alighted from the tricycle, he positioned himself before he fired the shots. When Babelito returned to the scene of the incident, he instructed some people to bring Rommel Hina to the hospital. He saw Agustin Adallom and Anderson Tuguinay that night. He saw Adallom's wife by the gate of their house. He did not see Noel Adallom after the incident. The police investigators came to the scene and he went with them to the Criminal Investigation Unit. The investigator was Lawa-Lawa. When he was about to give a statement

at the Criminal Investigation Unit, Nathaniel Hina, the father of Rommel appeared and he was telling a different story. Nathaniel was a usual drinking companion of Noel Adallom. Immediately prior to the incident, Rommel's father was coming down from the tricycle with some companions, the *barkada* of Noel Adallom, he passed by the eskinita and took a look at them. That was before the tricycle with Adallom as passenger passed by. At the police precinct Rommel's father was saying that it was another Ifugao, a certain Hubert who was responsible for the shooting. Because of this incident with the father of Rommel, he did not give a statement. He reiterated that he saw his brother hit as he was slowly moving his head and then he closed his eyes. After the first burst of gunfire it stopped for a while. When the gunman saw him, he raised his gun again and pointed it at him then he heard, "*pak*." It did not fire then he heard successive shots. He saw Adallom with the carbine only that night but he knew that his family has a carbine. He was shown a photograph marked Exhibit 2 depicting the wall of his sister Nanette's store marked as Exhibits A and B. There were no chairs in front of the store even when they were drinking. He was there first before Danilo and Rommel arrived. There were also two women who came thirty (30) minutes prior to the incident Danilo and Rommel had been drinking in front of his house. When they arrived, they gave him a bottle of beer to drink. And then, Danilo asked Rommel to buy cigarettes at Anderson's store. The father of Rommel arrived and stared at them, just as Rommel arrived. He knows that Nathaniel gave a statement at the police station. Although in his affidavit he also mentioned Johnwayne Lindawan, the police have not arrested him. Lindawan also alighted from the back of the tricycle driver and he stood by the side of the road. He could not identify the tricycle driver.

Diorito Coronas, Jr., a billiard player by profession, usually played at the billiard hall near the house of Noel Adallom in Sarep Street on the right side going up the road. On October 28, 2001, about midnight, he was at the videoke bar, his usual hang out in Sitio 6 going towards Talanay. While there, he heard gunfire so he immediately went near a parked vehicle in front of the videoke bar. When he tried to investigate, he saw three persons fall to the ground (*Bumulagta noong pinagbabaril*). Two of them were already down and the third one stood up and ran even as the gunman continued firing. He identified the man who ran away as Babelito Villareal (Samboy). It was Noel Adallom whom he saw carrying the firearm which he described as a little less than 2 feet, shooting the three

men. He saw Adallom's companion and a third one who was manning the tricycle. The place of the incident was well lighted but from where he was standing, the light came only from the videoke bar. Then he noticed a yellow tricycle without any plate number moving toward his direction while the two other guys went to the opposite direction going upward. When he saw that they left, he immediately approached the two men lying down. He identified one of them as Rommel who was still moaning. He became apprehensive that someone might see him and his family might be involved. He ran toward his house. He identified three sets of pictures marked Exhibits A and B. He pointed to the place where the three guys who were shot at were positioned.

On cross examination, Coronas identified the owner of the videoke bar as Anderson Tuguinay.[12]

Janita, when she took the witness stand, detailed the expenses incurred for the funeral and burial of her husband, Danilo.

Dr. Joselito reported that as a result of his autopsy examination of Danilo's body, he had determined that Danilo died from hemorrhagic shock due to multiple gunshot wounds. There were six gunshot wounds in Danilo's trunk and lower extremities. All points of entry were at Danilo's back. There were five exit wounds at the front portion of Danilo's body while one slug was recovered in Danilo's liver. Dr. Joselito submitted the recovered slug for ballistic examination. Dr. Joselito further elaborated on his findings during his cross-examination:

On cross examination, among others, he stated that the autopsy was conducted on October 28, 2001 at around 11:30 a.m. The abrasion on the victim's right acromial region was caused by friction of the skin on a rough hard surface. Gunshot wound no. 1 was directed anteriorwards, upwards and lateralwards meaning it came from the back, traveled upwards from the center towards the sides. Its point of entry was 10 cm. from the posterior midline while the point of exit was 20 cm. from the posterior midline. The point of entry of gunshot wound No. 2 (depicted as POE No. 1 in Exhibit J) is 4 cm. from the posterior midline and exited 6 cm. from the anterior midline. The bullet traversed from the rear to the front going to the right

[12] Records, pp. 200-204.

side of the cadaver. The third gunshot wound's point of entry is at the right infrascapular region end exited also on the right side of the chest but more towards the outer portion. The fourth gunshot wound's point of entry is on the left side, back to front, lateralwards meaning from center or near the center towards the most outer part of the left side of the body. The entrance and exit wound were on the same level. It is superficial wound meaning it did not enter the peritonial cavity. The fifth gunshot wound was directed anteriorwards, downwards and medialwards. Anteriorward means from the back, it is noted downwards towards the foot while medialwards is towards the center. The sixth and final gunshot wound was sustained at the right buttocks directed anteriorwards, upwards and lateralwards, meaning from the back upwards going to the head and lateralwards, meaning from the center to the outer side of the cadaver. Since the entrance wounds were at the back of the cadaver, assuming the victim was not moving, the assailant or muzzle of the gun was at the back of the victim. Except for the fourth gunshot wound which entered and exited at the same level and the fifth gunshot wound which was downwards, all the other gunshot wounds were directed upwards. If the victim was in a sitting position at the time he sustained the wounds with an upward trajectory, he would probably be in a ducking position, hence the upward trajectory. If the victim was stationary at the time he was shot, it is possible the assailant was moving but the most probable explanation for the differences in the level of the points of entry in relation to the points of exit of the wounds is that the victim moved as a result of the force of the bullet that entered his body. The slug that he extracted from the cadaver of the victim was from a .30 caliber firearm based on the report of the ballistician.[13]

The defense presented the testimonies of accused-appellant[14] himself; Mila Adallom (Mila),[15] accused-appellant's wife; Aida Marquez (Aida);[16] Sgt. Anderson Tuguinay (Anderson);[17] Sgt.

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[13] *Id.* at 206-207.

[14] TSN, February 10, 2003, March 3, 2003, March 10, 2003 and April 14, 2003.

[15] TSN, October 7, 2002.

[16] TSN, October 21, 2002.

[17] TSN, December 2, 2002.

Agustin Adallom (Agustin);[18] Editha Gutierrez (Editha);[19] and Elizabeth Buyayo (Elizabeth).[20]

Accused-appellant interposed the defenses of denial and alibi, to wit:

Noel Adallom, a machine operator, testified that on October 27, 2001, he arrived home from work at about 11:00 o'clock in the evening and he saw his wife working on the screen. He had coffee because he was not yet sleepy. He told his wife that he was going to the billiard hall at Retota. On his way, he saw the group of Boying Hina having a drinking spree. They gave him a shot of liquor but he refused because in that place, riots were rampant. He has known Boying Hina since he started residing in Batasan Hills in 1988. He went to the billiard hall owned by Ilustre. He is a new player and he played in with one Zaldy. After that, he transferred to the Retota billiard hall. He arrived there at about midnight. He played billiard with Danilo and Dominador Baldaba. They were playing when they heard gunshots. The sound of the gun fire was *rat-tat-tat*. They continued playing billiard until his wife arrived to fetch him. They stopped playing and he went with her. His wife asked him to pass by Senatorial Road where the sounds of gunshots came from. He saw Nanette Villareal Lindawan and asked her what was happening. Nanette was crying and she said, "*Patay na si kuya*," referring to Danilo Villareal. He has known Nanette from the time she got married. He talked to her in front of her house in the middle portion of Senatorial Road. He identified a picture marked Exhibit 3 showing the place where he talked to Nanette. When he was about to leave the place, he saw Sgt. Tuguinay holding a flashlight. When he asked Sgt. Tuguinay what happened, Tuguinay looked at him and did not say anything. He proceeded to talk with Sgt. Agustin when a police patrol arrived. The police were asking for someone who witnessed the incident. Babelito Villareal came out shirtless and boarded a mobile. He and his wife proceeded home. The place as shown in Exhibit 3 was not lighted. It was illuminated by some lights from other houses about ten meters away and you would not be able to recognize faces. When shown a sketch, Exhibit 1, he pointed the

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[18] TSN, December 9, 2002 and January 6, 2003.

[19] TSN, January 20, 2003.

[20] TSN, April 21, 2003.

billiard place of Retota (Exhibit 1-I). The Avocado Road alley was marked Exhibit 3-A. He was passing by that alley everyday in front of the house of Nanette. For the month of October 1 to 15, he was assigned to the first shift and went to work in the morning from 6:00 to 3:00 o'clock. From October 16 to the end of that month, he was on the second shift arriving home at 11:00 o'clock in the evening. There was no electric bulb in front of the house of Nanette. Across the house of Nanette is the house of Sgt. Agustin Adallom. There was no bulb in front of his house. In the morning of October 28, 2001, he was planting pechay at the house of Agustin Adallom at about 9:00 o'clock in the morning. On succeeding days after the incident, he usually left the house at noontime because his work started at 2:00 o'clock in the afternoon. He identified his time record from October 1 to 15 marked Exhibit 4; the time card for October 16-31 marked Exhibit 4-A; the time card for November 1-15 marked Exhibit 4-B; and the time card for November 16-30 marked as Exhibit 4-C. Exhibit number 7 has no signature because that was the time he was arrested on November 19. When he is not working he stayed at home. At the time he was arrested he was preparing coffee when he heard someone calling from outside and found out that they were *barangay* officials looking for him. He saw one BSDO jump over the fence with a gun so he became afraid. They told him that he was the one who killed Danilo Villareal. They were not accompanied by policemen. He was asking them why he was being apprehended without a warrant of arrest. They told him to give his explanation at the *barangay* office. He was handcuffed. They just placed him inside the cell for an hour. Policemen came and brought him to Station 6. On the 20th of November, he was brought to Camp Karingal and they asked for his name and occupation. They brought him to a vacant room and asked him, "*bakit mo pinatay si Villareal*." He said he did not commit the crime and they brought him back to the cell. On the 21st of November, he was brought to Quezon City Hall for inquest. He saw the name of Wilfredo Maynigo on top of his table. Upon investigation the prosecutor placed on top of the paper, "for further," (see Exhibit 8). He knows Danilo Villareal and his wife Janita because their wives were doing business of *paluwagan*. He met his wife in the house of Agustin Adallom and he did not know that she and Danilo had an affair.

On cross examination, Noel Adallom said that he works as a machine operator since 1988. He recalled that October 28, 2001 was a Sunday and it was his day-off. He was alone when he went to

Retota billiard hall near Senatorial Road after telling his wife that he would go there. Riots frequently happen on the upper portion of Senatorial Road. When they heard gunshots they were playing billiard, and they stopped momentarily. He was married to Mila Adallom in the year 2000 at a mass wedding but he knew her since 1992. He did not have any knowledge that Danilo and his wife were having an affair. He does not know of any such relationship nor did he hear any gossip about that. He knew Babelito Villareal since 1988. There had been no quarrel between them and does not know why he would point to him as the assassin. Mila fetched him that early morning of October 28, 2001 at Retota. He would have still played billiard with Danilo and Dominador but Mila came and asked him to go home because there was a shooting at the upper portion of Senatorial Road. After the incident he talked with Nanette, sister of Danilo Villareal and Babelito Villareal, and asked her what happened. She told him that [her] *kuya* was dead. He has known Danilo since 1998 because Danilo's wife and his wife were engaged in a *paluwagan* business. He seldom talked with Danilo Villareal because both of them were working and they seldom saw each other. He does not know of any reason to be jealous of Danilo because he does not know anything about the alleged relationship between him and his wife.[21]

Mila confirmed on the witness stand that her husband, accused-appellant, went out to play billiards at around 11:30 p.m. on October 27, 2001. After midnight, she heard a burst of gunfire. Fearing that accused-appellant might get into trouble, Mila decided to fetch accused-appellant at Retota's billiard hall. When she reached the billiard hall, Mila asked accused-appellant, who was then still playing billiards, to go home with her. To get home, Mila and accused-appellant took the route from Avocado Street to Senatorial Road. There, at Senatorial Road, Mila saw Danilo and Rommel already sprawled on the ground. On cross-examination, Mila denied having an affair with the deceased Danilo.

Aida, an ambulant vendor, testified that in the early morning of October 28, 2001, she was at a billiard hall watching accused-appellant, together with a certain Paeng and Zaldy, play a game, when she heard gunshots.

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[21] Records, pp. 213-217.

Sgt. Anderson, who resided within the vicinity of the shooting incident, recollected that at around past midnight of October 28, 2001, he was in a videoke bar with a certain Boying, when he heard two successive automatic gunshots. He went out of the bar and saw Nanette, Danilo's sister, who he asked about what happened. Nanette responded "*binaril si manong*." Sgt. Anderson went home and called the authorities. He went back to the scene of the shooting with a flashlight to look for empty shells. Sgt. Anderson also remembered that accused-appellant approached him and asked him about what happened.

Sgt. Agustin, who likewise resided within the vicinity of the shooting incident, narrated that he was awakened by a burst of gunfire in the early morning of October 28, 2001, at around 12:45 a.m. He then heard someone shouting "*wag sarge, wag sarge!*" Then he heard another burst of gunfire. He went out of his house and proceeded to Senatorial Road. There he saw blood in front of the window of the house of Nanette, Danilo's sister, and a lot of people already milling around. Among the people he saw were Nanette, accused-appellant, and Sgt. Anderson. Sgt. Agustin acknowledged that accused-appellant is his first-degree cousin and that he did not personally witness the shooting incident.

Editha is another ambulant vendor who recalled that at around 2:00 a.m. on October 28, 2001, she met a certain Boying (purportedly Rommel's father) on the road, who told her that his son was shot. Editha admitted, however, that she had no personal knowledge of the shooting incident.

The last witness for the defense was Elizabeth, accused-appellant's distant relative, and the neighbor and close friend of Janita, Danilo's wife. Elizabeth stated under oath before the RTC that on October 28, 2001, she opened her gate and saw people gathering at Senatorial Road. From listening to the stories of the bystanders, she learned that someone was shot at around 1:00 a.m. on October 28, 2001 by two persons wearing bonnets and riding a motorcycle. According to Elizabeth, Janita had never confided to her any marital problem with Danilo.

The prosecution presented on rebuttal Nanieta Lindawan (Nanieta), who gave the following account of the events that transpired in the early morning of October 28, 2001:

> Testifying on rebuttal, **Nanieta Lindawan** denied having met, seen or talk[ed] with Adallom, a townmate of her husband, in the early morning of October 28, 2001. There was never a time after the killing of [her] brother Danilo that she saw the accused on Senatorial Road. She belied the testimony of Agustin Adallom that he talked to her in the morning of October 28, 2001. She knows that he is a soldier stationed in Camp Capinpin and that he comes home only once a month for a day, either Saturday or Sunday. She is also sure that witness Sgt. Anderson Tuguinay was not able to talk to her that morning because after the incident, she was alone in the middle of the road crying.
>
> On cross-examination, among others, she stated that the incident happened right in front of her house. She was at home with her sisters and they were sleeping when she heard successive gunfire. She peeped out of the window and she saw two persons lying face down, Danilo and [Rommel]. She was able to recognize her brother because he was facing the window. She went out of the house minutes after the last gunshot. She called for her siblings. Except for the neighbor of her Ate [Janita], none of their neighbors came out because they were afraid. Her brother Babelito was also there and he told her that he was almost hit. Danilo was already brought to the hospital before the police arrived in unmarked vehicles. Although Sgt. Tuguinay owns a delivery van, they did not try to borrow it to bring Danilo to the hospital because Tuguinay does not lend his vehicle to anyone. She denied having borrowed facilities, like chairs and tables, from her best friend Elizabeth, who owns a school. Elizabeth told Nanieta's husband that she was afraid to go to the wake because it was her gun which was used in the shooting. She admitted she saw Elizabeth at the wake once. She does not remember the last time when Sgt. Agustin Adallom came home from Camp Capinpin. Her husband is also stationed in Camp Capinpin and if Sgt. Agustin was really there at the time of the incident, he would have offered to inform her husband about the incident.[22]

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[22] *Id.* at 217-218.

The documentary exhibits for the prosecution – consisting of Babelito's sworn statement, in a question and answer form, executed before PO3 Leo Tabuena on November 21, 2001; sketch and photographs of the location of the shooting incident; Danilo's death certificate; the autopsy report on Danilo's body; receipts and list of funeral and burial expenses incurred by Danilo's heirs; and the ballistics report which stated that the bullet recovered at the scene came from a .30 caliber firearm – were all admitted by the RTC in its Order[23] dated September 2, 2002.

The defense submitted its own documentary exhibits, specifically, photographs of several bullet holes at the store where Danilo, Rommel, and Babelito were shot to show the trajectory of the bullets; sketch of the location of the shooting incident; accused-appellant's daily time records from his work for the months of October and November 2001; and Janita's letter-complaint dated November 19, 2001 against accused-appellant. All these exhibits were admitted by the RTC in its Order[24] dated June 23, 2003.

On December 15, 2003, the RTC rendered its Decision giving more credence to the positive testimonies of prosecution witnesses Babelito and Diorito and finding implausible accused-appellant's defenses of denial and alibi. The RTC pronounced accused-appellant guilty beyond reasonable doubt of the crimes of murder of Danilo in Criminal Case No. Q-01-105875 and attempted murder of Babelito in Criminal Case No. Q-01-105877; but dismissed the charge against accused-appellant for the murder of Rommel in Criminal Case No. Q-01-105876 because of insufficiency of evidence. The dispositive portion of the RTC judgment reads:

WHEREFORE, finding the accused NOEL ADALLOM guilty beyond reasonable doubt of the crime of murder described and penalized under Art. 249 of the Revised Penal Code, in relation to Article 63 thereof, and there being no other aggravating circumstance attending the commission of the crime, he is hereby sentenced to

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[23] *Id.* at 92.

[24] *Id.* at 166.

suffer imprisonment of *reclusion perpetua* and to indemnify the heirs of the victim, Danilo Villareal, as follows:

1. ₱50,000.00 as civil indemnity;
2. ₱50,000.00 as moral damages;
3. ₱57,084.80 as actual damages; and
4. To pay the costs.

With respect to Crim. Case No. Q-01-105817 for the attempted murder of Babelito Villareal after applying the indeterminate sentence law, the court hereby sentences accused to suffer imprisonment of six (6) years and one (1) day to eight (8) years of *prision mayor*.

For insufficiency of evidence, Criminal Case No. Q-01-105876 is hereby dismissed.[25]

Accused-appellant appealed the foregoing RTC judgment before the Court of Appeals. Accused-appellant filed his Brief[26] on January 13, 2006 while plaintiff-appellee, represented by the Office of the Solicitor General, filed its Brief[27] on May 29, 2006.

In its Decision dated July 31, 2007, the Court of Appeals agreed with the factual findings of the RTC and ruled thus:

Verily, we reiterate the jurisprudential doctrine that great weight is accorded to the factual findings of the trial court particularly on the ascertainment of the credibility of witnesses; this can only be discarded or disturbed when it appears in the record that the trial court overlooked, ignored or disregarded some fact or circumstance of weight or significance which if considered would have altered the result. In the course of our review, the records disclose, that the trial court has considered all the evidences of both parties and, thus, has ruled correctly. Trial courts have the opportunity to see witnesses as they testify in court, an opportunity not readily available to appellate courts.

Thus, we find no reason to depart from the above ruling. We have examined the records and we confirm the trial court's findings that

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[25] *Id.* at 227-228.

[26] CA *rollo*, pp. 112-147.

[27] *Id.* at 198-217.

the testimonies of the witnesses are more trustworthy than the testimonies of the defense witnesses, particularly the appellant's.

With the application of prevailing laws and jurisprudence to the evidence presented, We cannot conclude otherwise but rule for the guilt of the accused-appellant beyond reasonable doubt.

WHEREFORE, in view of the foregoing, the decision of the trial court is AFFIRMED *in toto*.[28]

Hence, accused-appellant comes before us on appeal.

In our Resolution[29] dated July 23, 2008, we required the parties to file their respective supplemental briefs. Both plaintiff-appellee and accused-appellant manifested, however, that they had already exhausted their arguments before the Court of Appeals and would no longer file any supplemental brief.[30]

Accused-appellant assails his conviction for murder and attempted murder on these grounds:

A. The trial court erred in finding the testimony of Babelito Villareal and Diorito Coronas, Jr. credible.[31]

   1.) The trial court misapplied the doctrine that the relationship of the witness to the victim does not make the former a biased witness, but rather makes his testimony more credible.[32]

   2.) The trial court's findings that Babelito and [Diorito] narrated as they saw the incident in a clear, simple and direct manner; and, that their testimonies jive on material points are seriously belied by the evidence extant on the record.[33]

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[28] *Rollo*, pp. 11-12.

[29] *Id.* at 19-20.

[30] *Id.* at 29-31 and 32-36.

[31] CA *rollo*, p. 125.

[32] *Id.* at 127.

[33] *Id.*

3.) The trial court's finding that Babelito and [Diorito] could not have been mistaken with the identity of Noel Adallom because he had been a long time resident of the place is highly speculative.[34]

4.) The trial court's finding that the place where the incident occurred was lighted.[35]

5.) The trial court's finding that no motive was shown for the two witnesses to prevaricate and concoct the story to implicate Adallom with the killing is uncalled for.[36]

B. The trial court erred in relying on the weakness of the defense rather on the strength of the prosecution's evidence.[37]

C. The trial court erred in not finding that the evidence on record raise a reasonable doubt that the accused was the assailant.[38]

Plaintiff-appellee counter-argues that:

I

The testimony of Babelito Villareal, an eye witness and survivor of the assault, established with utmost certainty the identity of appellant as the assailant and gunman.

II

The prosecution established the guilt of appellant beyond reasonable doubt.

III

Appellant's defense of denial is weak and without factual basis.[39]

We sustain the conviction of accused-appellant for both crimes.

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[34] *Id.* at 139.

[35] *Id.*

[36] *Id.* at 140.

[37] *Id.* at 141.

[38] *Id.* at 143.

[39] *Id.* at 205.

Jurisprudence dictates that "when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court, since it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court."[40]

We find no cogent reason to deviate from the cited case doctrine.

As aptly appreciated by the RTC, prosecution witnesses Babelito and Diorito both positively identified accused-appellant as the person who treacherously shot Danilo and Babelito, and ultimately succeeded in killing Danilo. Said witnesses gave a forthright and consistent narration of what they had actually witnessed the early morning of October 28, 2001 at Senatorial Road.

Babelito had to relive before the RTC the traumatic experience of seeing his brother Danilo killed and barely escaping with his own life:

Q And can you tell us where were the three of you during that time?
A I was in front of my house which is also in front of the store of my sister Nanieta.

x x x x x x x x x

Q And what were the three of you doing at that time?
A We were seated in front of the store of my sister drinking beer, sir.

x x x x x x x x x

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[40] *Decasa v. Court of Appeals*, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 287.

Q And you said that you ran out of beer, what happened after you ran out of beer?
A We stopped drinking and then a tricycle arrived with its lights out and its engine turned off. It was still moving because the road was on a downward slope, sir.

x x x x x x x x x

Q At the time that you noticed the said tricycle, can you tell us what time was that?
A 12:45 in the morning of October 28, 2001, sir.

Q When you noticed the said tricycle moving downwards because of the sloping road, what happened next?
A Noel Adallom alighted from the tricycle. He got out of the sidecar.

Q By the way, were you able to count how many persons were inside the tricycle?
A There were three of them: the tricycle driver, Noel Adallom and John Win Lindawan.

Q You said Noel Adallom was inside the tricycle, at the time, where was he seated in the tricycle?
A Inside the tricycle, sir.

Q Now, what happened next when Noel Adallom alighted?
A He fired his gun, sir.

Q From the place wherein Noel Adallom alighted immediately thereafter fired his gun, how far was your group from him?
A About 4 meters, sir.

Q Now, you said Mr. Adallom alighted and fired his gun, can you remember what kind of firearm he used at the time?
A Carbine.

Q Was it a long or short firearm?
A Long firearm, sir.

Q And when he alighted and fired his gun, what happened to your group, if any?
A There were successive shots and I just saw gunbursts and he was saying, "*Ano*? *Ano*?" while he was firing successively at my brother and Rommel Hina who was already moaning.

Q Can you tell us your relative positions at the time Mr. Adallom fired his gun?
A I was at the back by the wall fronting the road and my brother's back was fronting the street facing me.

Q How about Mr. Hina, where was he positioned?
A On my right side, sir.

Q Can you tell us from what direction the said tricycle came from?
A From my left side, sir.

Q So, you are telling us that the tricycle which had no lights and with engines not running just came by the road and 4 meters from you, Mr. Adallom alighted and fired his gun?
A Yes, sir.

Q And what was the relative position of your brother when Noel Adallom fired his gun?
A While the tricycle was coming down the road, my brother turned his head and tried to run but he was already hit all at the back by the volley of fire.

Q What about Rommel Hina, what happened to him?
A He was also hit.

Q How about you?
A When I saw gunfire, I just closed my eyes and leaned against the wall and turned my head to the right and slowly, I moved my leg downwards and just waited for what would happen next.

Q And can you tell us what happened to you after you just left your fate to God?
A When my brother and Rommel fell, the firing stopped. I turned my head and I noticed that Noel Adallom looked surprised.

Q When Noel Adallom looked surprised upon seeing you still alive, what happened next?
A He again fired a succession of shots and then I heard "*tak-tak*."

Q And would you know what that sound was that you heard?
A I surmised that the gun must have jammed, sir.

Q What did you do, if any, when you realized that the gun must have jammed?

A I thought of standing up and running and I again heard a burst of gunfire, *"rat-tat-tat."*

Q What happened when you heard another round of gunfire?

A I sought cover behind a vehicle and I ran towards the corner to escape.[41] (Emphases supplied.)

Diorito corroborated Babelito's testimony when he recounted before the RTC the following:

Q Now, you said that you were at the said videoke bar at around 11:30 to 12:00 o'clock; while you were there at the said videoke, what happened if any?

A When I heard a gunfire, I immediately proceeded near the vehicle to look on what is happening.

Q Now, you said that you heard a gunfire; when you heard that gunfire, who were with you during that time?

A I was alone.

Q And you said that after hearing a gunfire you went out near a vehicle that was parked; can you tell us where is that vehicle that was parked where you went for cover?

A The vehicle is right in front of the videoke bar where we usually hang out and it so happened that the vehicle is also owned by the owner of that videoke bar.

x x x x x x x x x

Q You said you went to that vehicle which was parked, what else did you do after going near the vehicle?

A I was looking who shot who.

Q And what did you see if any?

A I saw three persons who fell (*bumulagta noong pinagbabaril*).

Q Now, you said that you saw three men who just fell when shots were fired upon, [is] any of those three men present

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[41] TSN, February 18, 2002, pp. 6-12.

in today's courtroom whom you said that fell down, can you identify them?

A The two persons are already dead but the other, I got surprised when he immediately ran.

Q That person that stood up, can you identify him?

A Yes, sir.

Q Can you kindly tell us his name if you know it?

A Samboy, sir.

Q Is he present in today's courtroom? Can you kindly stand up and point to us that person? Kindly tap the shoulder of that person.

A (Witness tapping the shoulder of a man who when asked answered that his name is Babelito Villareal.)

Q Aside from seeing those three men whom you said fell down, what else did you see if any?

A I saw one person firing shots and the other one is facing in front of the house of Samboy and the other person was manning the tricycle.

Q So, all in all, there were three persons that you saw other than those three other persons whom you said fell down, is that correct?

A Yes, sir.

Q You said that you saw one of those three persons firing a gun, can you kindly describe to us that gun that was used by the said person?

A The size of the gun that he was using was like this (witness demonstrating), less than two feet. But I don't know what kind.

Q That person whom you saw carrying a firearm and was shooting that men, if that person is present in today's courtroom, can you identify him?

A Yes, sir.

Q Can you kindly step down again and tap the shoulder of that person whom you saw?

A (Witness tapping the shoulder of a person who gave his name as Noel Adallom)

Q Now, when this shooting incident took place, can you kindly tell us how far were this group of men whom you said were shot from the place where you were hiding or covering near the vehicle?
A Same distance more or less eight meters.

Q How about the gunman who was shooting these three men, how far were you from him?
A It is farther by half meter.

Q You said that you saw this incident that took place, can you kindly tell us what was the lighting condition during that time that this incident happened?
A The place where the incident happened, it was well-lighted, however, from where I stand, the place was not lighted. The light came only from the videoke bar.

x x x x x x x x x

Q You said that after you saw Mr. Adallom shot these three men, what else did you see if any?
A When he started firing at these three men, right after, I saw one person immediately stood up and ran away and right after that, Noel Adallom kept on firing at the guy who was running.

Q When you said that guy stood up you were referring to Babelito Villareal, that one that you just pointed prior to the accused?
A Yes, sir.

Q And what happened next after Mr. Adallom was not able to hit Mr. Babelito Villareal?
A I noticed a yellow tricycle without plate number which immediately started its engine and moved downward towards my direction and the other two guys went on the other direction going upward.

Q How about you, what did you do next after seeing that incident?
A I immediately approached the two guys who were lying down.

Q And what did you see if any after that?
A I still heard one guy in the person of Rommel who was still moaning.

Q After hearing Rommel still moaning, what did you do, if any?
A I was a bit apprehensive because maybe somebody will see me and my family will be involved so I immediately ran away from the scene.

Q Where did you go after running away?
A I immediately went to my house.[42] (Emphases supplied.)

Accused-appellant's attacks on the credibility of Babelito and Diorito are unconvincing, each having already been soundly rejected by the Court of Appeals, thus:

The accused-appellant is not successful in proving the incredibility and improbability of the testimonies of the [prosecution's] two eye witnesses, hence, his arguments on the slight difference in the location and nature of gunshot wounds as opposed to the position of the assailant as testified by the witness are not sufficient to overturn the eyewitness accounts of Diorito and Babelito. **The positive identification of the witnesses is more than enough to prove the accused-appellant's guilt beyond reasonable doubt.**

Accused-appellant argues that the delay in charging him raises serious doubts on Babelito's testimony. Well settled is the rule that "Delay in making criminal accusations will not necessarily impair the credibility of a witness if such delay is satisfactorily explained." It has been established that the delay in filing a criminal complaint is attributed to his confusion and desire to consult his sister-in-law who is the wife of deceased Danilo. He also testified that he did not file a complaint immediately, because he did not want to disturb the wake of his brother. Such explanation is acceptable. True enough, he filed a complaint with the *barangay* officials and asked for their assistance in bringing accused-appellant to Station 6 after the funeral of his brother.

Accused-appellant tried to attack the reliability of Babelito's testimony by insisting that the story told by Babelito does not jive with the story told by the physical evidence consisting of the wounds sustained by the body of Danilo. We are not convinced. Accused-appellant is capitalizing on the fact that the location and nature of the gunshot wounds sustained by deceased Danilo is anteriorwards,

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[42] TSN, July 29, 2002, pp. 5-13.

lateralwards and going to the right. Simply stated, the direction of the wounds are slightly going upwards to the right, which according to the accused-appellant is impossible to be sustained by the deceased, because (as told by Babelito) he is standing up when he shot deceased Danilo, who is seated on the street. Such argument lacks merit. As explained by Dr. Rodrigo in his testimony, the body of Danilo could have moved and slumped forward when he was being hit by bullets in rapid succession and the position of his body has changed. When the bullets hit the body of the deceased, the body was already on the ground face down and the natural trajectory of bullets is upward, toward the head of the deceased. It is established that accused-appellant Noel was shooting while he was standing and the deceased was already on the ground. So when you try to examine the body and let it stand up, it would naturally create an impression that the bullets' direction is upward. The explanation is so simple, the body received the bullets while it is slumped, with face forward on the ground, and accused-appellant Noel was shooting while he was standing up. Such explanation is corroborated by Babelito's account that Danilo tried to turn his shoulders to face his left side, before he fell furthermore, such testimony is also corroborated by the testimony of Nanette which claimed that Danilo fell at the spot marked as Exhibit 2-C as told by Babelito.[43] (Emphasis supplied and citations omitted.)

In contrast, accused-appellant proffered the defenses of denial and alibi, which are the weakest of defenses in criminal cases. The well-established rule is that denial and alibi are self-serving negative evidence; they cannot prevail over the spontaneous, positive, and credible testimonies of the prosecution witnesses who pointed to and identified the accused-appellant as the malefactor. "Indeed, alibi is easy to concoct and difficult to disprove."[44]

Although accused-appellant presented other witnesses to supposedly corroborate his alibi, we could not ascribe much probative weight to said witnesses' testimonies. None of said witnesses actually saw the shooting, most only heard the gunshots and arrived at the scene after the shooting took place and, thus,

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[43] *Rollo*, pp. 9-11.

[44] *People v. Bulan*, 498 Phil. 586, 612 (2005).

had no personal knowledge of the said incident. Except for Aida, no other witness for the defense was physically with accused-appellant at the exact time of the shooting. And even Aida's testimony is unreliable given the observation of the RTC that it is in conflict with that of accused-appellant. Accused-appellant claimed that he first went to the billiard hall owned by Ilustre where he played with a certain **Zaldy** and then he transferred to Retota's billiard hall where he was playing with **Danilo and Dominador Baldaba** when he heard the gunshots. Yet, Aida attested that she was watching accused-appellant playing billiards with a certain **Zaldy** when she heard the gunshots.

In sum, the prosecution has proven beyond reasonable doubt the guilt of accused-appellant for the murder of Danilo in Criminal Case No. Q-01-105875 and attempted murder of Babelito in Criminal Case No. Q-01-105877.

The penalty prescribed by law for the crime of murder is *reclusion perpetua to death*.[45] With the repeal of the death penalty law, the only penalty prescribed by law for the crime of murder is *reclusion perpetua*. The Indeterminate Sentence Law does not apply, *inter alia*, to persons convicted of offenses punished with death penalty or life imprisonment, including *reclusion perpetua*. Hence, accused-appellant has been properly sentenced to suffer the penalty of *reclusion perpetua* for the murder of Danilo in Criminal Case No. Q-01-105875.

However, we find it necessary to modify the award of damages to Danilo's heirs in Criminal Case No. Q-01-105875. Consistent with prevailing case law,[46] accused-appellant must pay Danilo's heirs the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, in addition to the sum of ₱57,084.80 as actual damages.

For the crime of attempted murder, the penalty shall be *prision mayor*, since Article 51 of the Revised Penal Code states that

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[45] Revised Penal Code, Article 248.

[46] *People v. Orias and Elarcosa*, G.R. No. 186539, June 29, 2010, 622 SCRA 417, 438.

a penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony. Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code. Absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *prision mayor* in its medium term, which has a duration of eight (8) years and one (1) day to ten (10) years; and that the minimum should be within the range of *prision correccional*, which has a duration of six (6) months and one (1) day to six (6) years. Hence, we sentence accused-appellant to suffer imprisonment from six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, for the attempted murder of Babelito in Criminal Case No. Q-01-105877.

We further order accused-appellant to pay Babelito the amounts of ₱25,000.00 as civil indemnity, ₱10,000.00 as moral damages, and ₱25,000.00 as exemplary damages in Criminal Case No. Q-01-105877.

WHEREFORE, the instant appeal of accused-appellant Noel T. Adallom is **DENIED** for lack of merit. The Decision dated July 31, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00365, which affirmed the Decision dated December 15, 2003 of the Regional Trial Court, Branch 76, Quezon City, in Criminal Case Nos. Q-01-105875 and Q-01-105877, finding Noel T. Adallom guilty beyond reasonable doubt of the crimes of murder and attempted murder, respectively, is hereby **AFFIRMED** with the following **MODIFICATIONS** as to the penalties and awards imposed:

1) For the murder of Danilo Villareal in Criminal Case No. Q-01-105875, Noel T. Adallom is **SENTENCED** to suffer the penalty of *reclusion perpetua* and **ORDERED** to pay the heirs of Danilo Villareal the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱57,084.80 as actual damages; and

2) For the attempted murder of Babelito Villareal in Criminal Case No. Q-01-105877, Noel T. Adallom is **SENTENCED** to suffer imprisonment from six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and **ORDERED** to pay Babelito Villareal the amounts of ₱25,000.00 as civil indemnity, ₱10,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Perlas-Bernabe,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 184885. March 7, 2012]

ERNESTO G. YMBONG, *petitioner, vs.* **ABS-CBN BROADCASTING CORPORATION, VENERANDA SY and DANTE LUZON,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABS-CBN POLICY NO. HR-ER-016 REQUIRING EMPLOYEES WHO INTEND TO RUN FOR PUBLIC OFFICE OR ACCEPT POLITICAL APPOINTMENT TO RESIGN FROM THEIR POSITIONS; VALIDITY THEREOF, UPHELD.— We have consistently held that so long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special

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[*] Per Special Order No. 1207 dated February 23, 2012.

laws or under valid agreements, this Court will uphold them. In the instant case, ABS-CBN validly justified the implementation of Policy No. HR-ER-016. It is well within its rights to ensure that it maintains its objectivity and credibility and freeing itself from any appearance of impartiality so that the confidence of the viewing and listening public in it will not be in any way eroded. Even as the law is solicitous of the welfare of the 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. It is worth noting that such exercise of management prerogative has earned a stamp of approval from no less than our Congress itself when on February 12, 2001, it enacted Republic Act No. 9006, otherwise known as the "Fair Election Act." Section 6.6 thereof reads: 6.6. **Any mass media columnist, commentator, announcer, reporter, on-air correspondent or personality who is a candidate for any elective public office or is a campaign volunteer for or employed or retained in any capacity by any candidate or political party shall be deemed resigned, if so required by their employer**, or shall take a leave of absence from his/her work as such during the campaign period: *Provided,* That any media practitioner who is an official of a political party or a member of the campaign staff of a candidate or political party shall not use his/her time or space to favor any candidate or political party.

2. ID.; ID.; ID.; ID.; A MEMORANDUM WHICH REQUIRES EMPLOYEES TO GO ON LEAVE IF THEY INTEND TO RUN FOR PUBLIC OFFICE CANNOT SUPERSEDE POLICY NO. HR-ER-016.— The CA correctly ruled that though Luzon, as Assistant Station Manager for Radio of ABS-CBN, has policy-making powers in relation to his principal task of administering the network's radio station in the Cebu region, the exercise of such power should be in accord with the general rules and regulations imposed by the ABS-CBN Head Office to its employees. Clearly, the March 25, 1998 Memorandum issued by Luzon which only requires employees to go on leave if they intend to run for any elective position is in absolute contradiction with Policy No. HR-ER-016 issued by the ABS-CBN Head Office in Manila which requires the resignation, not only the filing of a leave of absence, of any

employee who intends to run for public office. Having been issued beyond the scope of his authority, the March 25, 1998 Memorandum is therefore void and did not supersede Policy No. HR-ER-016. Also worth noting is that Luzon in his Sworn Statement admitted the inaccuracy of his recollection of the company policy when he issued the March 25, 1998 Memorandum and stated therein that upon double-checking of the exact text of the policy statement and subsequent confirmation with the ABS-CBN Head Office in Manila, he learned that the policy required resignation for those who will actually run in elections because the company wanted to maintain its independence. Since the officer who himself issued the subject memorandum acknowledged that it is not in harmony with the Policy issued by the upper management, there is no reason for it to be a source of right for Ymbong.

3. ID.; ID.; ID.; ID.; ID.; AN EMPLOYEE IS DEEMED RESIGNED FROM HIS POSITION WHEN HE RAN FOR COUNCILOR.— As Policy No. HR-ER-016 is the subsisting company policy and not Luzon's March 25, 1998 Memorandum, Ymbong is deemed resigned when he ran for councilor. We find no merit in Ymbong's argument that "[his] automatic termination x x x was a blatant [disregard] of [his] right to due process" as he was "never asked to explain why he did not tender his resignation before he ran for public office as mandated by [the subject company policy]." Ymbong's overt act of running for councilor of Lapu-Lapu City is tantamount to resignation on his part. He was separated from ABS-CBN not because he was dismissed but because he resigned. Since there was no termination to speak of, the requirement of due process in dismissal cases cannot be applied to Ymbong. Thus, ABS-CBN is not duty-bound to ask him to explain why he did not tender his resignation before he ran for public office as mandated by the subject company policy.

APPEARANCES OF COUNSEL

Espedido & Famador Law Firm for petitioner.

Sobreviñas Hayudini Bodegon Navarro & San Juan for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a Rule 45 Petition seeking to set aside the August 22, 2007 Decision[1] and September 18, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 86206 declaring petitioner to have resigned from work and not illegally dismissed.

The antecedent facts follow:

Petitioner Ernesto G. Ymbong started working for ABS-CBN Broadcasting Corporation (ABS-CBN) in 1993 at its regional station in Cebu as a television talent, co-anchoring *Hoy Gising* and TV Patrol Cebu. His stint in ABS-CBN later extended to radio when ABS-CBN Cebu launched its AM station DYAB in 1995 where he worked as drama and voice talent, spinner, scriptwriter and public affairs program anchor.

Like Ymbong, Leandro Patalinghug also worked for ABS-CBN Cebu. Starting 1995, he worked as talent, director and scriptwriter for various radio programs aired over DYAB.

On January 1, 1996, the ABS-CBN Head Office in Manila issued Policy No. HR-ER-016 or the "Policy on Employees Seeking Public Office." The pertinent portions read:

> **1.** **Any employee who intends to run for any public office position, must file his/her letter of resignation**, at least thirty (30) days prior to the official filing of the certificate of candidacy either for national or local election.
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> x x x x x x x x x
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> 3. Further, **any employee who intends to join a political group/ party or even with no political affiliation but who intends**

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[1] *Rollo*, pp. 150-161. Penned by Associate Justice Agustin S. Dizon with Associate Justices Francisco P. Acosta and Stephen C. Cruz, concurring.

[2] *Id.* at 169-170. Penned by Associate Justice Francisco P. Acosta with Associate Justices Priscilla Baltazar-Padilla and Stephen C. Cruz, concurring.

> **to openly and aggressively campaign for a candidate or group of candidates** (*e.g.* publicly speaking/endorsing candidate, recruiting campaign workers, *etc.*) **must file a request for leave of absence subject to management's approval**. For this particular reason, the employee should file the leave request at least thirty (30) days prior to the start of the planned leave period.
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> x x x[3] [Emphasis and underscoring supplied.]

Because of the impending May 1998 elections and based on his immediate recollection of the policy at that time, Dante Luzon, Assistant Station Manager of DYAB issued the following memorandum:

TO	:	ALL CONCERNED
FROM	:	DANTE LUZON
DATE	:	MARCH 25, 1998
SUBJECT	:	AS STATED

Please be informed that per company policy, **any employee/talent who wants to run for any position in the coming election will have to file a leave of absence the moment he/she files his/her certificate of candidacy.**

The services rendered by the concerned employee/talent to this company will then be temporarily suspended for the entire campaign/ election period.

For strict compliance.[4] [Emphasis and underscoring supplied.]

Luzon, however, admitted that upon double-checking of the exact text of the policy and subsequent confirmation with the ABS-CBN Head Office, he saw that the policy actually required suspension for those who intend to campaign for a political party or candidate and resignation for those who will actually run in the elections.[5]

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[3] *Id.* at 54.

[4] CA *rollo*, p. 168.

[5] *Id.* at 157.

After the issuance of the March 25, 1998 Memorandum, Ymbong got in touch with Luzon. Luzon claims that Ymbong approached him and told him that he would leave radio for a couple of months because he will campaign for the administration ticket. It was only after the elections that they found out that Ymbong actually ran for public office himself at the eleventh hour. Ymbong, on the other hand, claims that in accordance with the March 25, 1998 Memorandum, he informed Luzon through a letter that he would take a few months leave of absence from March 8, 1998 to May 18, 1998 since he was running for councilor of Lapu-Lapu City.

As regards Patalinghug, Patalinghug approached Luzon and advised him that he will run as councilor for Naga, Cebu. According to Luzon, he clarified to Patalinghug that he will be considered resigned and not just on leave once he files a certificate of candidacy. Thus, Patalinghug wrote Luzon the following letter on April 13, 1998:

Dear Mr. Luzon,

I'm submitting to you my letter of resignation as your Drama Production Chief and Talent due to your company's policy that every person connected to ABS-CBN that should seek an elected position in the government will be forced to resigned (sic) from his position. So herewith I'm submitting my resignation with a hard heart. But I'm still hoping to be connected again with your prestigious company after the election[s] should you feel that I'm still an asset to your drama production department. I'm looking forward to that day and I'm very happy and proud that I have served for two and a half years the most stable and the most prestigious Radio and TV Network in the Philippines.

As a friend[,] wish me luck and Pray for me. Thank you.

Very Truly Yours,

(Sgd.)

Leandro "Boy" Patalinghug[6]

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[6] *Id.* at 171.

Unfortunately, both Ymbong and Patalinghug lost in the May 1998 elections.

Later, Ymbong and Patalinghug both tried to come back to ABS-CBN Cebu. According to Luzon, he informed them that they cannot work there anymore because of company policy. This was stressed even in subsequent meetings and they were told that the company was not allowing any exceptions. ABS-CBN, however, agreed out of pure liberality to give them a chance to wind up their participation in the radio drama, *Nagbabagang Langit*, since it was rating well and to avoid an abrupt ending. The agreed winding-up, however, dragged on for so long prompting Luzon to issue to Ymbong the following memorandum dated September 14, 1998:

TO	:	NESTOR YMBONG
FROM	:	DANTE LUZON
SUBJECT	:	AS STATED
DATE	:	14 SEPT. 1998

Please be reminded that your services as drama talent had already been automatically terminated when you ran for a local government position last election.

The Management however gave you more than enough time to end your drama participation and other involvement with the drama department.

It has been decided therefore that all your drama participation shall be terminated effective immediately. However, your involvement as drama spinner/narrator of the drama "*NAGBA[BA]GANG LANGIT*" continues until its writer/director Mr. Leandro Patalinghug wraps it up one week upon receipt of a separate memo issued to him.[7]

Ymbong in contrast contended that after the expiration of his leave of absence, he reported back to work as a regular talent and in fact continued to receive his salary. On September 14, 1998, he received a memorandum stating that his services are

[7] *Id.* at 172.

being terminated immediately, much to his surprise. Thus, he filed an illegal dismissal complaint[8] against ABS-CBN, Luzon and DYAB Station Manager Veneranda Sy. He argued that the ground cited by ABS-CBN for his dismissal was not among those enumerated in the Labor Code, as amended. And even granting without admitting the existence of the company policy supposed to have been violated, Ymbong averred that it was necessary that the company policy meet certain requirements before willful disobedience of the policy may constitute a just cause for termination. Ymbong further argued that the company policy violates his constitutional right to suffrage.[9]

Patalinghug likewise filed an illegal dismissal complaint[10] against ABS-CBN.

ABS-CBN prayed for the dismissal of the complaints arguing that there is no employer-employee relationship between the company and Ymbong and Patalinghug. ABS-CBN contended that they are not employees but talents as evidenced by their talent contracts. However, notwithstanding their status, ABS-CBN has a standing policy on persons connected with the company whenever they will run for public office.[11]

On July 14, 1999, the Labor Arbiter rendered a decision[12] finding the dismissal of Ymbong and Patalinghug illegal, thus:

> WHEREFORE, in the light of the foregoing, judgment is rendered finding the dismissal of the two complainants illegal. An order is issued directing respondent ABS[-]CBN to immediately reinstate complainants to their former positions without loss of seniority rights plus the payment of backwages in the amount of ₱200,000.00 to each complainant.

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[8] *Id.* at 65.

[9] *Id.* at 67-70.

[10] *Id.* at 64.

[11] *Id.* at 76.

[12] *Id.* at 86-93.

All other claims are dismissed.

SO ORDERED.[13]

The Labor Arbiter found that there exists an employer-employee relationship between ABS-CBN and Ymbong and Patalinghug considering the stipulations in their appointment letters/talent contracts. The Labor Arbiter noted particularly that the appointment letters/talent contracts imposed conditions in the performance of their work, specifically on attendance and punctuality, which effectively placed them under the control of ABS-CBN. The Labor Arbiter likewise ruled that although the subject company policy is reasonable and not contrary to law, the same was not made known to Ymbong and Patalinghug and in fact was superseded by another one embodied in the March 25, 1998 Memorandum issued by Luzon. Thus, there is no valid or authorized cause in terminating Ymbong and Patalinghug from their employment.

In its memorandum of appeal[14] before the National Labor Relations Commission (NLRC), ABS-CBN contended that the Labor Arbiter has no jurisdiction over the case because there is no employer-employee relationship between the company and Ymbong and Patalinghug, and that Sy and Luzon mistakenly assumed that Ymbong and Patalinghug could just file a leave of absence since they are only talents and not employees. In its Supplemental Appeal,[15] ABS-CBN insisted that Ymbong and Patalinghug were engaged as radio talents for DYAB dramas and personality programs and their contract is one between a self-employed contractor and the hiring party which is a standard practice in the broadcasting industry. It also argued that the Labor Arbiter should not have made much of the provisions on Ymbong's attendance and punctuality since such requirement is a dictate of the programming of the station, the slating of shows at regular time slots, and availability of recording studios

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[13] *Id.* at 92-93.

[14] *Rollo*, pp. 268-272.

[15] CA *rollo*, pp. 101-146.

– not an attempt to exercise control over the manner of his performance of the contracted anchor work within his scheduled spot on air. As for the pronouncement that the company policy has already been superseded by the March 25, 1998 Memorandum issued by Luzon, the latter already clarified that it was the very policy he sought to enforce. This matter was relayed by Luzon to Patalinghug when the latter disclosed his plans to join the 1998 elections while Ymbong only informed the company that he was campaigning for the administration ticket and the company had no inkling that he will actually run until the issue was already moot and academic. ABS-CBN further contended that Ymbong and Patalinghug's "reinstatement" is legally and physically impossible as the talent positions they vacated no longer exist. Neither is there basis for the award of back wages since they were not earning a monthly salary but paid talent fees on a per production/per script basis. Attached to the Supplemental Appeal is a Sworn Statement[16] of Luzon.

On March 8, 2004, the NLRC rendered a decision[17] modifying the labor arbiter's decision. The *fallo* of the NLRC decision reads:

> WHEREFORE, premises considered, the decision of Labor Arbiter Nicasio C. Aninon dated 14 July 1999 is MODIFIED, to wit:
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> Ordering respondent ABS-CBN to reinstate complainant Ernesto G. Ymbong and to pay his full backwages computed from 15 September 1998 up to the time of his actual reinstatement.
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> SO ORDERED.[18]

The NLRC dismissed ABS-CBN's Supplemental Appeal for being filed out of time. The NLRC ruled that to entertain the same would be to allow the parties to submit their appeal on piecemeal basis, which is contrary to the agency's duty to facilitate speedy disposition of cases. The NLRC also held that ABS-CBN wielded the power of control over Ymbong and

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[16] *Id.* at 147-161.

[17] *Rollo*, pp. 74-82.

[18] *Id.* at 82.

Patalinghug, thereby proving the existence of an employer-employee relationship between them.

As to the issue of whether they were illegally dismissed, the NLRC treated their cases differently. In the case of Patalinghug, it found that he voluntarily resigned from employment on April 21, 1998 when he submitted his resignation letter. The NLRC noted that although the tenor of the resignation letter is somewhat involuntary, he knew that it is the policy of the company that every person connected therewith should resign from his employment if he seeks an elected position in the government. As to Ymbong, however, the NLRC ruled otherwise. It ruled that the March 25, 1998 Memorandum merely states that an employee who seeks any elected position in the government will only merit the temporary suspension of his services. It held that under the principle of social justice, the March 25, 1998 Memorandum shall prevail and ABS-CBN is estopped from enforcing the September 14, 1998 memorandum issued to Ymbong stating that his services had been automatically terminated when he ran for an elective position.

ABS-CBN moved to reconsider the NLRC decision, but the same was denied in a Resolution dated June 21, 2004.[19]

Imputing grave abuse of discretion on the NLRC, ABS-CBN filed a petition for *certiorari*[20] before the CA alleging that:

I.

RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION AND SERIOUSLY MISAPPRECIATED THE FACTS IN NOT HOLDING THAT RESPONDENT YMBONG IS A FREELANCE RADIO TALENT AND MEDIA PRACTITIONER—NOT A "REGULAR EMPLOYEE" OF PETITIONER—TO WHOM CERTAIN PRODUCTION WORK HAD BEEN OUTSOURCED BY ABS-CBN CEBU UNDER AN INDEPENDENT CONTRACTORSHIP SITUATION, THUS RENDERING THE LABOR COURTS WITHOUT JURISDICTION OVER THE CASE IN THE ABSENCE OF EMPLOYMENT RELATIONS BETWEEN THE PARTIES.

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[19] CA *rollo*, pp. 61-62.

[20] *Id.* at 2-48.

II.

RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION IN DECLARING RESPONDENT YMBONG TO BE A REGULAR EMPLOYEE OF PETITIONER AS TO CREATE A CONTRACTUAL EMPLOYMENT RELATION BETWEEN THEM WHEN NONE EXISTS OR HAD BEEN AGREED UPON OR OTHERWISE INTENDED BY THE PARTIES.

III.

EVEN ASSUMING THE ALLEGED EMPLOYMENT RELATION TO EXIST FOR THE SAKE OF ARGUMENT, RESPONDENT NLRC IN ANY CASE COMMITTED A GRAVE ABUSE OF DISCRETION IN NOT SIMILARLY UPHOLDING AND APPLYING COMPANY POLICY NO. HR-ER-016 IN THE CASE OF RESPONDENT YMBONG AND DEEMING HIM AS RESIGNED AND DISQUALIFIED FROM FURTHER ENGAGEMENT AS A RADIO TALENT IN ABS-CBN CEBU AS A CONSEQUENCE OF HIS CANDIDACY IN THE 1998 ELECTIONS, AS RESPONDENT NLRC HAD DONE IN THE CASE OF PATALINGHUG.

IV.

RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION AND DENIED DUE PROCESS TO PETITIONER IN REFUSING TO CONSIDER ITS SUPPLEMENTAL APPEAL, DATED OCTOBER 18, 1999, "FOR BEING FILED OUT OF TIME" CONSIDERING THAT THE FILING OF SUCH A PLEADING IS NOT IN ANY CASE PROSCRIBED AND RESPONDENT NLRC IS AUTHORIZED TO CONSIDER ADDITIONAL EVIDENCE ON APPEAL; MOREOVER, TECHNICAL RULES OF EVIDENCE DO NOT APPLY IN LABOR CASES.

V.

RESPONDENT NLRC COMMITTED A GRAVE ABUSE OF DISCRETION IN GRANTING THE RELIEF OF REINSTATEMENT AND BACKWAGES TO RESPONDENT YMBONG SINCE HE NEVER OCCUPIED ANY "REGULAR" POSITION IN PETITIONER FROM WHICH HE COULD HAVE BEEN "ILLEGALLY DISMISSED," NOR ARE ANY OF THE RADIO PRODUCTIONS IN WHICH HE HAD DONE TALENT WORK FOR PETITIONER STILL EXISTING. INDEED, THERE IS NO BASIS WHATSOEVER FOR THE AWARD OF BACKWAGES TO RESPONDENT YMBONG

IN THE AMOUNT OF ₱200,000.00 CONSIDERING THAT, AS SHOWN BY THE UNCONTROVERTED EVIDENCE, HE WAS NOT EARNING A MONTHLY "SALARY" OF "₱20,000.00," AS HE FALSELY CLAIMS, BUT WAS PAID TALENT FEES ON A "PER PRODUCTION/PER SCRIPT" BASIS WHICH AVERAGED LESS THAN ₱10,000.00 PER MONTH IN TALENT FEES ALL IN ALL.[21]

On August 22, 2007, the CA rendered the assailed decision reversing and setting aside the March 8, 2004 Decision and June 21, 2004 Resolution of the NLRC. The CA declared Ymbong resigned from employment and not to have been illegally dismissed. The award of full back wages in his favor was deleted accordingly.

The CA ruled that ABS-CBN is estopped from claiming that Ymbong was not its employee after applying the provisions of Policy No. HR-ER-016 to him. It noted that said policy is entitled "Policy on Employees Seeking Public Office" and the guidelines contained therein specifically pertain to employees and did not even mention talents or independent contractors. It held that it is a complete turnaround on ABS-CBN's part to later argue that Ymbong is only a radio talent or independent contractor and not its employee. By applying the subject company policy on Ymbong, ABS-CBN had explicitly recognized him to be an employee and not merely an independent contractor.

The CA likewise held that the subject company policy is the controlling guideline and therefore, Ymbong should be considered resigned from ABS-CBN. While Luzon has policy-making power as assistant radio manager, he had no authority to issue a memorandum that had the effect of repealing or superseding a subsisting policy. Contrary to the findings of the Labor Arbiter, the subject company policy was effective at that time and continues to be valid and subsisting up to the present. The CA cited Patalinghug's resignation letter to buttress this conclusion, noting that Patalinghug openly admitted in his letter that his resignation was in line with the said company policy. Since ABS-CBN applied Policy No. HR-ER-016 to Patalinghug,

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[21] *Id.* at 13-14.

there is no reason not to apply the same regulation to Ymbong who was on a similar situation as the former. Thus, the CA found that the NLRC overstepped its area of discretion to a point of grave abuse in declaring Ymbong to have been illegally terminated. The CA concluded that there is no illegal dismissal to speak of in the instant case as Ymbong is considered resigned when he ran for an elective post pursuant to the subject company policy.

Hence, this petition.

Petitioner argues that the CA gravely erred: (1) in upholding Policy No. HR-ER-016; (2) in upholding the validity of the termination of Ymbong's services; and (3) when it reversed the decision of the NLRC 4th Division of Cebu City which affirmed the decision of Labor Arbiter Nicasio C. Aniñon.[22]

Ymbong argues that the subject company policy is a clear interference and a gross violation of an employee's right to suffrage. He is surprised why it was easy for the CA to rule that Luzon's memorandum ran counter to an existing policy while on the other end, it did not see that it was in conflict with the constitutional right to suffrage. He also points out that the issuance of the March 25, 1998 Memorandum was precisely an exercise of the management power to which an employee like him must respect; otherwise, he will be sanctioned for disobedience or worse, even terminated. He was not in a position to know which between the two issuances was correct and as far as he is concerned, the March 25, 1998 Memorandum superseded the subject company policy. Moreover, ABS-CBN cannot disown acts of its officers most especially since it prejudiced his property rights.[23]

As to the validity of his dismissal, Ymbong contends that the ground relied upon by ABS-CBN is not among the just and authorized causes provided in the Labor Code, as amended. And even assuming the subject company policy passes the test

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[22] *Rollo*, p. 19.

[23] *Id.* at 21-23.

of validity under the pretext of the right of the management to discipline and terminate its employees, the exercise of such right is not without bounds. Ymbong avers that his automatic termination was a blatant disregard of his right to due process. He was never asked to explain why he did not tender his resignation before he ran for public office as mandated by the subject company policy.[24]

Ymbong likewise asseverates that both the Labor Arbiter and the NLRC were consistent in their findings that he was illegally dismissed. It is settled that factual findings of labor administrative officials, if supported by substantial evidence, are accorded not only great respect but even finality.[25]

ABS-CBN, for its part, counters that the validity of policies such as Policy No. HR-ER-016 has long been upheld by this Court which has ruled that a media company has a right to impose a policy providing that employees who file their certificates of candidacy in any election shall be considered resigned.[26] Moreover, case law has upheld the validity of the exercise of management prerogatives even if they appear to limit the rights of employees as long as there is no showing that management prerogatives were exercised in a manner contrary to law.[27] ABS-CBN contends that being the largest media and entertainment company in the country, its reputation stems not only from its ability to deliver quality entertainment programs but also because of neutrality and impartiality in delivering news.[28]

ABS-CBN further argues that nothing in the company policy prohibits its employees from either accepting a public appointive position or from running for public office. Thus, it cannot be considered as violative of the constitutional right of suffrage. Moreover, the Supreme Court has recognized the employer's

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[24] *Id.* at 27-32.

[25] *Id.* at 33.

[26] *Id.* at 212-213.

[27] *Id.* at 213.

[28] *Id.* at 217.

right to enforce occupational qualifications as long as the employer is able to show the existence of a reasonable business necessity in imposing the questioned policy. Here, Policy No. HR-ER-016 itself states that it was issued "to protect the company from any public misconceptions" and "[t]o preserve its objectivity, neutrality and credibility." Thus, it cannot be denied that it is reasonable under the circumstances.[29]

ABS-CBN likewise opposes Ymbong's claim that he was terminated. ABS-CBN argues that on the contrary, Ymbong's unilateral act of filing his certificate of candidacy is an overt act tantamount to voluntary resignation on his part by virtue of the clear mandate found in Policy No. HR-ER-016. Ymbong, however, failed to file his resignation and in fact misled his superiors by making them believe that he was going on leave to campaign for the administration candidates but in fact, he actually ran for councilor. He also claims to have fully apprised Luzon through a letter of his intention to run for public office, but he failed to adduce a copy of the same.[30]

As to Ymbong's argument that the CA should not have reversed the findings of the Labor Arbiter and the NLRC, ABS-CBN asseverates that the CA is not precluded from making its own findings most especially if upon its own review of the case, it has been revealed that the NLRC, in affirming the findings of the Labor Arbiter, committed grave abuse of discretion amounting to lack or excess of jurisdiction when it failed to apply the subject company policy in Ymbong's case when it readily applied the same to Patalinghug.[31]

Essentially, the issues to be resolved in the instant petition are: (1) whether Policy No. HR-ER-016 is valid; (2) whether the March 25, 1998 Memorandum issued by Luzon superseded Policy No. HR-ER-016; and (3) whether Ymbong, by seeking an elective post, is deemed to have resigned and not dismissed by ABS-CBN.

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[29] *Id.* at 217-218.

[30] *Id.* at 219-220.

[31] *Id.* at 231.

Policy No. HR-ER-016 is valid.

This is not the first time that this Court has dealt with a policy similar to Policy No. HR-ER-016. In the case of *Manila Broadcasting Company v. NLRC*,[32] this Court ruled:

> What is involved in this case is an unwritten company policy considering any employee who files a certificate of candidacy for any elective or local office as resigned from the company. Although §11(b) of R.A. No. 6646 does not require mass media commentators and announcers such as private respondent to resign from their radio or TV stations but only to go on leave for the duration of the campaign period, we think that the company may nevertheless validly require them to resign as a matter of policy. In this case, the policy is justified on the following grounds:
>
> > Working for the government and the company at the same time is clearly disadvantageous and prejudicial to the rights and interest not only of the company but the public as well. In the event an employee wins in an election, he cannot fully serve, as he is expected to do, the interest of his employer. The employee has to serve two (2) employers, obviously detrimental to the interest of both the government and the private employer.
> >
> > In the event the employee loses in the election, the impartiality and cold neutrality of an employee as broadcast personality is suspect, thus readily eroding and adversely affecting the confidence and trust of the listening public to employer's station.[33]

ABS-CBN, like Manila Broadcasting Company, also had a valid justification for Policy No. HR-ER-016. Its rationale is embodied in the policy itself, to wit:

Rationale:

ABS-CBN BROADCASTING CORPORATION strongly believes that it is to the best interest of the company to continuously remain apolitical. **While it encourages and supports its employees to have greater political awareness and for them to exercise their**

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[32] G.R. No. 121975, August 20, 1998, 294 SCRA 486.

[33] *Id.* at 490-491.

right to suffrage, the company, however, prefers to remain politically independent and unattached to any political individual or entity.

Therefore, **employees who [intend] to run for public office or accept political appointment should resign from their positions, in order to protect the company from any public misconceptions. To preserve its objectivity, neutrality and credibility**, the company reiterates the following policy guidelines for strict implementation.

x x x[34] [Emphasis supplied.]

We have consistently held that so long as a company's management prerogatives are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, this Court will uphold them.[35] In the instant case, ABS-CBN validly justified the implementation of Policy No. HR-ER-016. It is well within its rights to ensure that it maintains its objectivity and credibility and freeing itself from any appearance of impartiality so that the confidence of the viewing and listening public in it will not be in any way eroded. Even as the law is solicitous of the welfare of the 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.[36]

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[34] *Rollo*, p. 54.

[35] *San Miguel Brewery Sales Force Union (PTGWO) v. Ople*, G.R. No. 53515, February 8, 1989, 170 SCRA 25, 28, citing *LVN Pictures Employees and Workers Asso. v. LVN Pictures, Inc.*, Nos. L-23495 & L-26432, September 30, 1970, 35 SCRA 147; *Phil. American Embroideries, Inc. v. Embroidery and Garment Workers Union*, No. L-20143, January 27, 1969, 26 SCRA 634; and *Phil. Refining Co., Inc. v. Garcia*, Nos. L-21871 & L-21962, September 27, 1966, 18 SCRA 107.

[36] *Abbot Laboratories (Phils.), Inc. v. NLRC*, No. 76959, October 12, 1987, 154 SCRA 713, 717, citing *Dangan v. National Labor Relations Commission*, Nos. 63127-28, February 20, 1984, 127 SCRA 706.

It is worth noting that such exercise of management prerogative has earned a stamp of approval from no less than our Congress itself when on February 12, 2001, it enacted Republic Act No. 9006, otherwise known as the "Fair Election Act." Section 6.6 thereof reads:

> 6.6. **Any mass media columnist, commentator, announcer, reporter, on-air correspondent or personality who is a candidate for any elective public office or is a campaign volunteer for or employed or retained in any capacity by any candidate or political party shall be deemed resigned, <u>if so required by their employer</u>**, or shall take a leave of absence from his/her work as such during the campaign period: *Provided*, That any media practitioner who is an official of a political party or a member of the campaign staff of a candidate or political party shall not use his/her time or space to favor any candidate or political party. [Emphasis and underscoring supplied.]

Policy No. HR-ER-016 was not superseded by the March 25, 1998 Memorandum

The CA correctly ruled that though Luzon, as Assistant Station Manager for Radio of ABS-CBN, has policy-making powers in relation to his principal task of administering the network's radio station in the Cebu region, the exercise of such power should be in accord with the general rules and regulations imposed by the ABS-CBN Head Office to its employees. Clearly, the March 25, 1998 Memorandum issued by Luzon which only requires employees to go on leave if they intend to run for any elective position is in absolute contradiction with Policy No. HR-ER-016 issued by the ABS-CBN Head Office in Manila which requires the resignation, not only the filing of a leave of absence, of any employee who intends to run for public office. Having been issued beyond the scope of his authority, the March 25, 1998 Memorandum is therefore void and did not supersede Policy No. HR-ER-016.

Also worth noting is that Luzon in his Sworn Statement admitted the inaccuracy of his recollection of the company policy

when he issued the March 25, 1998 Memorandum and stated therein that upon double-checking of the exact text of the policy statement and subsequent confirmation with the ABS-CBN Head Office in Manila, he learned that the policy required resignation for those who will actually run in elections because the company wanted to maintain its independence. Since the officer who himself issued the subject memorandum acknowledged that it is not in harmony with the Policy issued by the upper management, there is no reason for it to be a source of right for Ymbong.

Ymbong is deemed resigned when he ran for councilor.

As Policy No. HR-ER-016 is the subsisting company policy and not Luzon's March 25, 1998 Memorandum, Ymbong is deemed resigned when he ran for councilor.

We find no merit in Ymbong's argument that "[his] automatic termination x x x was a blatant [disregard] of [his] right to due process" as he was "never asked to explain why he did not tender his resignation before he ran for public office as mandated by [the subject company policy]."[37] Ymbong's overt act of running for councilor of Lapu-Lapu City is tantamount to resignation on his part. He was separated from ABS-CBN not because he was dismissed but because he resigned. Since there was no termination to speak of, the requirement of due process in dismissal cases cannot be applied to Ymbong. Thus, ABS-CBN is not duty-bound to ask him to explain why he did not tender his resignation before he ran for public office as mandated by the subject company policy.

In addition, we do not subscribe to Ymbong's claim that he was not in a position to know which of the two issuances was correct. Ymbong most likely than not, is fully aware that the subsisting policy is Policy No. HR-ER-016 and not the March 25, 1998 Memorandum and it was for this reason that, as stated by Luzon in his Sworn Statement, he only told the latter that he will only campaign for the administration ticket and not actually

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[37] *Rollo,* pp. 31-32.

run for an elective post. Ymbong claims he had fully apprised Luzon by letter of his plan to run and even filed a leave of absence but records are bereft of any proof of said claim. Ymbong claims that the letter stating his intention to go on leave to run in the election is attached to his Position Paper as Annex "A", a perusal of said pleading attached to his petition before this Court, however, show that Annex "A" was not his letter to Luzon but the September 14, 1998 Memorandum informing Ymbong that his services had been automatically terminated when he ran for a local government position.

Moreover, as pointed out by ABS-CBN, had Ymbong been truthful to his superiors, they would have been able to clarify to him the prevailing company policy and inform him of the consequences of his decision in case he decides to run, as Luzon did in Patalinghug's case.

WHEREFORE, the petition for review on *certiorari* is **DENIED** for lack of merit.

With costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[*] Designated additional member per Special Order No. 1207 dated February 23, 2012.

SECOND DIVISION

[G.R. No. 188103. March 7, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEROME PALER,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, PRESENT.— The elements necessary for the prosecution of illegal sale of drugs are (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti.* The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. The testimonial and the documentary pieces of evidence adduced by the prosecution in support of its case against the appellant establish the presence of these elements. *First,* the identity of the seller was duly established. The police officers, PO3 Balbutin and PO1 Gula, positively identified appellant Paler as the same person from whom their asset purchased the sachet of *shabu.* PO3 Balbutin and PO1 Gula were both present at the entrapment and they witnessed the transaction between the *poseur*-buyer and the appellant. *Second,* the police officers saw the appellant handing the sachet to the *poseur*-buyer in exchange of the ₱100.00 peso bill that the appellant earlier received from the *poseur*-buyer. Not only did the police retrieve the *shabu* which was the object of the illegal sale, they also recovered three more sachets of *shabu* from the same empty pack of Winston cigarette, a fact which bolsters the prosecution's claim that the appellant indeed sold *shabu* to the *poseur*-buyer.

2. ID.; ID.; ID.; CRUCIAL LINKS IN THE CHAIN OF CUSTODY, SUFFICIENTLY ESTABLISHED.— Contrary to the appellant's defense, there is no break in the chain of custody of the seized item found to be *shabu* from the time the police asset turned it over to PO3 Balbutin, to the time it was turned over to PO1 Gula, the PACT's evidence custodian, up to its presentation to and photographing before the media, Department of Justice, public official, and up to the time that the *shabu* was brought to the forensic chemist at the PNP Crime Laboratory for laboratory examination. x x x Plainly, the prosecution established the crucial links in the chain of custody of the sold and seized sachet of *shabu,* from the time it was first seized from the appellant, until it was brought for examination and presented in court. The identity, quantity and quality of the illegal drugs remained untarnished and preserved; hence, the integrity of the drugs seized remained intact.

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.*:

The prosecution charged Jerome Paler (appellant Paler) before the Regional Trial Court (RTC), 10th Judicial Region, Branch 12, Oroquieta City, with violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 under the Information which states:

That on or about the 22nd day of June 2004, at 6:00 o'clock in the afternoon, in Barrientos Street, Barangay Layawan, Oroquieta City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without being authorized by law, did then and there wilfully, unlawfully and feloniously **sell, deliver and give away to a poseur-buyer one (1) sachet of *shabu*** in consideration of a marked 100-peso bill with serial number HW 257588 which was actually handed to and received by the said accused, and on the

occasion of such buy-bust operation confiscated further from the possession of the accused another three (3) sachets of *shabu* placed in an empty pack of Winston cigarette which buy-bust operation resulted to the confiscation of a total of four (4) sachets of *shabu* all weighing 0.0565 gram.[1] (Emphasis supplied)

The Facts

It was 22 June 2004, around 6:00 o'clock in the evening. Appellant Paler was standing and conversing with a man in front of Golden Heart *Videoke* Bar in Layawan, Oroquieta City. Inside a car, parked about 12 meters away, seven (7) policemen in civilian clothes from the Provincial Anti-Crime Team (PACT), Misamis Occidental, were intently observing the movements of their informant who was the one conversing with the appellant.[2]

Minutes passed. The police informant brought out a ₱100.00 bill from his left pocket and handed it to the appellant who took a sachet of white substance from a cigarette pack in exchange for the money.[3] Then, the police asset ceremoniously scratched his head,[4] long enough for the policemen to notice it. In seconds, the police emerged from the car, raced to the appellant and surrounded him. It was a buy-bust operation.

Commotion followed. PO3 Rico Balbutin (PO3 Balbutin) met the police informant who acted as *poseur*-buyer – retrieving the sachet of white crystalline substance; PO3 Balbultin then ran to the appellant to bodily search him. He recovered the marked ₱100.00 bill tacked in the appellant's pocket and three (3) other sachets of suspected *shabu* hidden in the empty pack of Winston cigarettes.[5] Meanwhile, a certain PO2 Ramirez handcuffed the appellant, explained why he was being arrested and informed him of his constitutional rights.

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[1] CA *rollo*, p. 8.

[2] *Rollo*, pp. 4-5.

[3] Testimony of PO3 Rico B. Balbutin. TSN, 28 October 2004, pp. 8-9.

[4] *Id.* at 10.

[5] *Id.* at 11.

PO3 Balbutin handed the confiscated items to PO1 Clint Jill Gula (PO1 Gula), the PACT's evidence custodian, who brought them along with the appellant to the PACT's headquarters in Lower Lamak, Oroquieta City.[6] There, PO1 Gula marked the confiscated items with "BB1" to signify the sachet sold to the *poseur*-buyer; "JP2", "JP3", and "JP4", to signify the three sachets hidden in the empty pack of Winston cigarette. The team also entered the incident in the PACT's log book.[7]

At around 8:45 o'clock in the evening, after PO1 Gula prepared the request for the appellant's urine test, the team proceeded to the provincial crime laboratory to subject the appellant to drug testing. Thereafter, the appellant was turned over to the Oroquieta City Police where he spent his first night in jail.

On 23 June 2004, at around 8:30 o'clock in the morning, in the presence of the representatives from the Department of Justice, media, and a public official,[8] PO1 Gula, retrieved the confiscated items already marked the previous night and made the inventory; a photographer also took pictures of them. The inventory report stated:

Pursuant to Section 21 of RA 9165, **a physical** [**inventory**] **and photographing of the items** described below that were confiscated from the possession and control of one Jerome Paler *y* Lanit, 34 years old, married and resident of Barrientos Street, Barangay Layawan, Oroquieta City during the buy bust operation conducted on or about 221800H June 2004 at the aforementioned place by elements of this office, to wit:

1.) **One (1) deck of *shabu* with marking "BB1" which was bought during the buy bust operation.**

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[6] *Rollo*, p. 8.

[7] The PACT's log book, pages 31-32, entry number 0101 contains the circumstances of the arrest of the appellant and was marked as exhibit G-1 until G-2. TSN, 28 October 2004, p. 13.

[8] Jose Adlaon represented the Department of Justice; Ernesto Quiros represented the media; Lydon Mutia, the public official; and, Carmelita Calamba was the photographer. TSN, 28 October 2004, p. 18.

2.) Three (3) decks of suspected *shabu* with markings "JP2 to JP4" placed in an empty pack of Winston cigarette which were confiscated from his possession and control of said suspect.

3.) One (1) piece of one hundred peso bill with serial number HW257588 as marked money which was confiscated from his (Jerome) possession and control.

The said physical inventory and photographing were conducted at this office on or about 220830H June 2004 **in the presence of the suspect/offender, from the media, from the Department of Justice and elected Public Official of said place.**[9] (Emphasis supplied)

All of the witnesses signed the inventory report which was done in the presence of the appellant who was furnished with a copy thereof.

The appellant pleaded not guilty when arraigned. This is his version:

The appellant's Golden Heart *Videoke* Bar was to re-open on 22 June 2004. At around 6:00 o'clock in the evening, while he and his live-in partner, Debbie Amil, were standing in front of the bar, waiting for customers to arrive, police officers PO3 Balbutin, Julito Candawan, Eilrred Ramirez and Allan Alvarico (Alvarico) alighted from a *Tamaraw FX* which was parked in front of the bar thirty minutes earlier.[10] The policemen approached and invited him and Debbie Amil to the PACT's headquarters to verify the report that Debbi Amil has a pending warrant of arrest. He heeded the invitation, trusting the police officers whom he personally knew and even considered as his friends. At the headquarters, however, PO3 Balbutin searched the appellant and even undressed him, finding in his possession his cashless wallet and an empty pack of Winston cigarettes. The police took his wallet,[11] while he kept holding the empty pack of cigarettes.

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[9] Records, p. 6.

[10] Testimony of the accused-appellant. TSN, 4 August 2005, p. 4.

[11] *Id.* at 6.

The appellant and PO3 Balbutin proceeded to the latter's office, also at the headquarters, while Alvarico tailed them. The appellant sat in front of PO3 Balbutin's table, who put the pack of Winston cigarette on the table (now with three sticks of cigarette) while Alvarico stood beside him. The two police officers asked him about Debbie Amil's warrant of arrest and informed him that he was to undergo drug testing. At that time, he claimed to have already stopped using drugs after completing in the previous year his rehabilitation from drug use.

Before proceeding to the crime laboratory, PO3 Balbutin asked for the pack of Winston which the appellant was carrying; PO3 Balbutin pulled out from the pack of Winston three (3) sachets of *shabu* to the surprise of the appellant. He denied any knowledge about the *shabu* and claimed the sachets were planted.

The appellant's urine sample tested positive for drug use, and the chemistry report revealed that all the sachets of white crystalline substance confiscated from the appellant were *Methamphetamine Hydrocloride* or *shabu.*

The RTC found the appellant guilty of violation of Section 5 of Republic Act No. 9165, a decision which the Court of Appeals affirmed *in toto.* Thus:

WHEREFORE, premises considered, the appealed June 7, 2006 Decision of the Regional Trial Court (RTC), 10th Judicial Region, Branch 12, Oroquieta City, in Criminal Case No. 1672, entitled *"People of the Philippines v. Jerome L. Paler of Barrientos St., Layawan, Oroquieta City,"* is hereby AFFIRMED *in toto*.[12]

Hence, this appeal on the following grounds:

a. In giving full weight and credence to the unbelievable testimonies of the prosecution witnesses; and

b. In convicting the appellant of the crime charged despite failure of the prosecution to prove his guilt beyond reasonable doubt.[13]

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[12] CA *rollo,* p. 22.

[13] *Id.* at 95.

The appellant contends that the prosecution's case against the accused-appellant is weak because the evidence does not measure up to the required quantum of proof to convict in criminal cases.[14]

The Court's Ruling

We affirm the Decision of the Court of Appeals.

The appellant was convicted for violation of Section 5 of Republic Act No. 9165, which reads:

> Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any such transaction.

The elements necessary for the prosecution of illegal sale of drugs are (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[15] The delivery of the illicit drug to the *poseur*-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. The testimonial and the documentary pieces of evidence adduced by the prosecution in support of its case against the appellant establish the presence of these elements.

First, the identity of the seller was duly established. The police officers, PO3 Balbutin and PO1 Gula, positively identified appellant Paler as the same person from whom their asset

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[14] *Id.* at 34.

[15] *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 449.

purchased the sachet of *shabu*. PO3 Balbutin and PO1 Gula were both present at the entrapment and they witnessed the transaction between the *poseur*-buyer and the appellant.

Second, the police officers saw the appellant handing the sachet to the *poseur*-buyer in exchange of the ₱100.00 peso bill that the appellant earlier received from the *poseur*-buyer. Not only did the police retrieve the *shabu* which was the object of the illegal sale, they also recovered three more sachets of *shabu* from the same empty pack of Winston cigarette, a fact which bolsters the prosecution's claim that the appellant indeed sold *shabu* to the *poseur*-buyer.

To cast doubt as to the identity and integrity of the *shabu*, the appellant claims that the police officers failed to account for the chain of custody of the seized item alleged to be *shabu*.

Contrary to the appellant's defense, there is no break in the chain of custody of the seized item found to be *shabu* from the time the police asset turned it over to PO3 Balbutin, to the time it was turned over to PO1 Gula, the PACT's evidence custodian, up to its presentation to and photographing before the media, Department of Justice, public official, and up to the time that the *shabu* was brought to the forensic chemist at the PNP Crime Laboratory for laboratory examination.

The procedure for the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs, among others, is provided under Section 21, paragraph 1 of Article II of Republic Act No. 9165, as follows:

Section 21, paragraph 1, Article II of Republic Act No. 9165 reads:

(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.** (Emphasis supplied)

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, 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. (Emphasis supplied)

The testimony of PO3 Balbutin outlines the chain of custody of the confiscated items, *i.e.*, sachet of *shabu*:[16]

Q: And what if anything did you find on the body of Jerome Paler as a result of the search you made?

A: I recovered the ₱100.00 bill marked money and one (1) empty Winston cigarette pack containing three (3) sachets of *shabu*.

Q: At that time, were you already sure that was *shabu*?

A: We just suspected that was a dangerous drug or *shabu*.

Q: You said, you recovered from the possession of the accused the marked money, how was that marked money related which you recovered from the possession of the accused during the search to the marked money which you gave to your poseur buyer purposely to buy *shabu* in the entrapment operation?

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[16] TSN, 28 October 2004, pp. 10-17.

A: That was the same marked money sir.

Q: And what did you do with the marked money and the empty pack of Winston cigarette containing three (3) sachets of *shabu*?

A: I immediately confiscated it.

x x x x x x x x x

Q: And in going to the PACT Office, who among the members of the team was in custody of the items confiscated?

A: It is in the custody of PO1 Gula who is our evidence custodian.

Q: At the PACT Office, what if anything you did therein in relation to the incident?

A: The incident was being reflected in the log book.

Q: Who recorded it?

A: Me.

Q: Do you have your log book with you now?

A: Yes sir.

x x x x x x x x x

Q: I have here an empty pack of winston cigarette, will you please examine this and inform this Honorable Court what relation has this empty pack of winston cigarette in relation to the empty pack of winston cigarette which you recovered from the possession of the accused, Jerome Paler during the incident?

A: The same pack sir.

x x x x x x x x x

Q: I noticed that in these sachets of *shabu* there are markings BB1, JP2, JP3 and JP4, who wrote these markings?

A: PO1 Gula sir.

Court

Q: Why do you know that it was he who marked it?

A: It is his customary duty, your honor that whatever evidence confiscated the evidence custodian will mark it.

Q: And what if anything did PO1 Gula do at the PACT office?

A: He made a request for urine test for the two arrested persons.

Q: What else?

A: He likewise put markings on the evidence confiscated sir.

Q: After the investigation, entering the incident in the PACT blotter, where did you bring Jerome Paler?

A: We brought him to the Provincial Crime Laboratory for drug testing.

x x x x x x x x x

Q: And from the Misamis Occidental Provincial Crime Laboratory Office, where did PO1 Gula and other members of the PACT together with Jerome Paler and Debbie Amil go?

A: They went back to PACT Office.

Q: From the PACT Office, where did they go?

A: From the PACT Office, we proceeded to Oroquieta City Police Station in order to turn over them.

Q: On the following day, that was June 23, 2004, what if anything did PO1 Gula prepare at the PACT Office?

A: He prepared an inventory of the items confiscated and likewise the other members of the team contacted the supposed witness for the inventory.

Court: Will the defense counsel admit the existence of the inventory?

A: We already admitted the existence of the inventory, your Honor. I think it was stated in the pre-trial order, your honor. Only the existence, your honor.

x x x x x x x x x

Q: And when the representatives of the different sectors arrived at your office, the PACT Office, what did they do there?

A: PO1 Gula withdrew the evidence confiscated and placed it on the table and in the presence of the witness, the items confiscated were being inventoried.

x x x x x x x x x

Q: Did the representatives and you sign the inventory of the items confiscated?

A: Yes sir.

Q: After the signing of the inventory of the items confiscated, what followed next at your office?

A: x x x [T]the photographer took a picture.

Plainly, the prosecution established the crucial links in the chain of custody of the sold and seized sachet of *shabu,* from the time it was first seized from the appellant, until it was brought for examination and presented in court. The identity, quantity and quality of the illegal drugs remained untarnished and preserved; hence, the integrity of the drugs seized remained intact.

WHEREFORE, premises considered, this Court **AFFIRMS** the assailed Decision of the Court of Appeals.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 188670. March 7, 2012]

DEPARTMENT OF AGRARIAN REFORM, represented by OIC-Secretary JOSE MARI B. PONCE, now by Secretary NASSER C. PANGANDAMAN, *petitioner, vs.* **HEIRS OF ANGEL T. DOMINGO,** *respondents.*

SYLLABUS

POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION FOR PRIVATE AGRICULTURAL LANDS ACQUIRED BY THE GOVERNMENT UNDER P.D. NO. 27 IN RELATION TO E.O. NO. 228 SHOULD BE COMPUTED IN ACCORDANCE WITH THE METHOD SET FORTH UNDER R.A. 6657.— Indeed, it would be the height of inequity if we are to compute the just compensation for the subject land using the values at the time when P.D. No. 27 was issued. Admittedly, the expropriation of the subject land was initiated under P.D. No. 27. Nevertheless, with the passage of R.A. No. 6657, the CA aptly ruled that the method set forth thereunder should be adopted in computing just compensation for the subject land. In sum, in determining just compensation, the cost of the acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

APPEARANCES OF COUNSEL

Erwin G. Ruiz for DAR.
Antonio G. Conde for respondents.
LBP Legal Department for Land Bank of the Philippines.

R E S O L U T I O N

REYES, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by the Department of Agrarian Reform (DAR) assailing the Decision[1] dated June 30, 2009 issued by the Court of Appeals (CA) in the consolidated cases of CA-G.R. SP Nos. 83765 and 84791 entitled *"Land Bank of the Philippines v. Heirs of Angel T. Domingo"* and *"Department of Agrarian Reform v. Heirs of Angel T. Domingo,"* respectively.

The late Angel T. Domingo (Domingo) is the registered owner of a 70.3420-hectare rice land situated at Macapabellag, Guimba, Nueva Ecija, covered by Transfer Certificate of Title No. NT-97157.

On October 21, 1972, Presidential Decree No. 27[2] (P.D. No. 27) was issued, pursuant to which actual tenant farmers of private agricultural lands devoted to rice and corn were deemed as full owners of the land they till. The land transfer program under P.D. No. 27 was subsequently implemented by Executive Order No. 228[3] (E.O. No. 228) which was issued on July 17, 1987.

Consequently, out of the 70.3420 hectares of the said rice land, 34.9128 hectares (subject land) were taken by the government under its land transfer program and awarded the

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[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok, concurring; *rollo,* pp. 25-37.

[2] "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."

[3] "Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27; Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner."

same to tenant farmers. Several Emancipation Patents were then issued to qualified tenant farmers on various dates, to wit:

Date Issued	Number Emancipation Patents Issued	Total Area Covered
April 29, 1988	11	21.8520 hectares
October 4, 1994	3	2.9372 hectares
July 29, 1997	3	7.3997 hectares
February 21, 2001	1	2.7245 hectares

On April 26, 2000, Domingo filed with the Regional Trial Court (RTC) of Guimba, Nueva Ecija a complaint for determination and payment of just compensation against the Land Bank of the Philippines (LBP) and DAR. Apparently, the LBP and DAR initially pegged the amount of just compensation for the subject land at ₱127,298.61.

Domingo opposed the said valuation and claimed that the just compensation for the subject land should be computed using the parameters set forth under Republic Act No. 6657[4] (R.A. No. 6657). Thus, Domingo claimed that the just compensation for the subject land should not be less than ₱5,236,920.00 for the whole 34.9128 hectares or ₱150,000.00 per hectare. He asserted that the subject land is a fully irrigated rice land capable of one-half harvest in two years, yielding an average harvest of 50 *cavans* per hectare. He likewise claimed that he has yet to receive the just compensation for the subject land.

The LBP and DAR disputed Domingo's valuation and claimed that the determination of just compensation should be governed by the provisions of P.D. No. 27 in relation to E.O. No. 228, *i.e.* **Land Value = Average Gross Production (AGP) x 2.5 x ₱35.00**,[5] the latter amount representing the Government

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[4] "An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation and for Other Purposes".

[5] Section 2 of E.O. No. 228 reads:

Section 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by

Support Price (GSP) on October 21, 1972. Thus, using this formula, they claimed that the just compensation for the subject land should be ₱459,091.60 inclusive of the benefit of DAR Administrative Order No. 13[6] (A.O. No. 13).

Further, the LBP asserted that it had already paid Domingo the just compensation for the subject land, the latter having withdrawn the amounts of ₱419,438.17 and ₱39,653.43.

On January 21, 2004, the RTC rendered a Decision which, *inter alia*, fixed the just compensation for the subject land at ₱3,709,999.49. Evidently, the RTC used the method set forth under P.D. No. 27 in relation to E.O. No. 228 except that it used the GSP rate at the time of issuance of the various Emancipation Patents. The RTC computed the just compensation as follows:

a. For the 21.8520 hectare portion taken in 1988

= 91.42 x 2.5 x 175
= ₱39,996.25 x 21.8520
= ₱873,998.05 x 2.397 (Annual compounding rate of 6% p/a for 15 years)
= ₱2,094,973.32

b. For the 2.9372 hectare portion taken in 1994

= 91.42 x 2.5 x 300
= ₱68,565.00 per hectare x 2.9372

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the *Barangay* Committee on Land Production in accordance with Department Memorandum Circular No. 26, series of 1973 and related issuances and regulations of the Department of Agrarian Reform. The average gross production shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty-Five Pesos (₱35), the government support price for one *cavan* of 50 kilos of *palay* on October 21, 1972, or Thirty-One Pesos (₱31), the government support price for one *cavan* of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner.

[6] "Rules and Regulations Governing Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by P.D. No. 27 and E.O. No. 228".

= ₱201,389.11 x 1.689 (Annual compounding rate of 6% pa)
= ₱340,146.20

c. For the 7.3997 hectare portion taken in 1997

= 91.42 x 2[.]5 x 400
= 91.420 (sic) per hectare x 7.3997
= 676,480.74 x 1.419 (Annual compounding rate of 6% pa for 6 years)
= ₱959,926.17

d. For the 2.7245 hectare portion taken in 2001

= 91.42 x 2.5 x 450
= ₱102,847.50 per hectare x 2.72[4]5
= ₱280,208.01 x 1.124 (Annual compounding rate of 6% for 2 years)
= ₱314,953.80

or a total of ₱3,709,999.49 x x x[7]

The LBP and DAR filed their respective motions for reconsideration, which were partially granted by the RTC in its Order dated March 29, 2004. Accordingly, the RTC, after deleting the 6% additional increment it imposed, directed the LBP and DAR to pay Domingo the total amount of ₱2,032,075.91 as just compensation for the subject land.

The LBP and DAR then appealed from the foregoing disposition of the RTC. On June 30, 2009, the CA rendered the herein assailed Decision, the decretal portion of which reads:

WHEREFORE, the decision of the RTC is **AFFIRMED** with **MODIFICATION**. Conformably, the RTC of Guimba, Nueva Ecija, Branch 33, acting as a Special Agrarian Court, is **DIRECTED** to compute the final valuation of the subject land with deliberate dispatch in accordance with this Decision.

SO ORDERED.[8]

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[7] *Rollo*, pp. 28-29.

[8] *Id.* at 36.

In remanding the case to the RTC for the computation of the just compensation due on the subject land, the CA ruled that:

> In fine, the RTC did not commit an error when it applied the provisions of R.A. 6657 and that the date of taking of Domingo's rice land for purposes of computing just compensation should be reckoned from the issuance dates of emancipation patents. However, the just compensation for the subject land in the present case should be computed in accordance with *Lubrica vs. Land Bank* x x x. In said case, it was held that:
>
> > Section 18 of R.A. No. 6657 mandates that the LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and the LBP or as may be finally determined by the court as the just compensation for the land. In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.
>
> In the case of *Land Bank of the Philippines v. Celada* x x x, the above provision was converted into a formula by the DAR through Administrative Order No. 05, S. 1998, to wit:
>
> > Land Value (LV) = (Capitalized Net Income x 0.6) + (Comparable Sales x 0.3) + Market Value per Tax Declaration x 0.1)[9]

Undaunted, the DAR instituted the instant petition for review on *certiorari* before this Court alleging that the CA erred when it affirmed the ruling of the RTC that, for purposes of determining the just compensation for lands covered by P.D. No. 27, the provisions of R.A. No. 6657 must be applied.

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

In their comment,[10] the respondents Heirs of Angel T. Domingo asserted that the instant petition ought to be denied, asserting that this Court, in a long line of cases, had established that the method of computing for just compensation set forth under R.A. No. 6657 applies to lands taken by the government under P.D. No. 27 in relation to E.O. No. 228.

Basically, this Court is called upon to determine this issue: whether the method set forth under R.A. No. 6657 in the computation of just compensation may be applied to private agricultural lands taken by the government under the auspices of P.D. No. 27 in relation to E.O. No. 228.

We rule in the affirmative.

The issue presented by the instant case is not novel. In *Land Bank of the Philippines v. Natividad*,[11] this Court held that just compensation for private agricultural lands acquired by the government under the auspices of P.D. No. 27 in relation to E.O. No. 228 should be computed in accordance with the method set forth under R.A. No. 6657. Thus:

> Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, *ergo* just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.
>
> Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. **Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect**, conformably with our ruling in *Paris v. Alfeche.*

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[10] *Id.* at 64-74.

[11] 497 Phil. 738 (2005).

x x x x x x x x x

It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.[12] (Citations omitted and emphasis supplied)

Likewise, in the cognate case of *Land Bank of the Philippines v. Heirs of Angel T. Domingo*,[13] this court held that:

LBP's contention that the property was taken on 21 October 1972, the date of effectivity of PD 27, thus just compensation should be computed based on the GSP in 1972, is erroneous. The date of taking of the subject land for purposes of computing just compensation should be reckoned from the issuance dates of the emancipation patents. An emancipation patent constitutes the conclusive authority for the issuance of a Transfer Certificate of Title in the name of the grantee. It is from the issuance of an emancipation patent that the grantee can acquire the vested right of ownership in the landholding, subject to the payment of just compensation to the landowner.

When RA 6657 was enacted into law in 1988, the agrarian reform process in the present case was still incomplete as the amount of just compensation to be paid to Domingo had yet to be settled. Just compensation should therefore be determined and the expropriation process concluded under RA 6657.

Guided by this precept, just compensation for purposes of agrarian reform under PD 27 should adhere to Section 17 of RA 6657 which states:

> "Sec. 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual

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[12] *Id.* at 746-747.

[13] G.R. No. 168533, February 4, 2008, 543 SCRA 627.

use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation."

x x x x x x x x x

In sum, we affirm the rulings of the trial court and the appellate court that the provisions of RA 6657 apply to the present case and that the date of taking of Domingo's riceland for purposes of computing just compensation should be reckoned from the issuance dates of emancipation patents.[14] x x x (Citations omitted and emphasis supplied)

Indeed, it would be the height of inequity if we are to compute the just compensation for the subject land using the values at the time when P.D. No. 27 was issued. Admittedly, the expropriation of the subject land was initiated under P.D. No. 27. Nevertheless, with the passage of R.A. No. 6657, the CA aptly ruled that the method set forth thereunder should be adopted in computing just compensation for the subject land.

In sum, in determining just compensation, the cost of the acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.[15]

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[14] *Id.* at 642-643.

[15] Section 17, R.A. No. 6657.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED**. The assailed Decision dated June 30, 2009 issued by the Court of Appeals in CA-G.R. SP Nos. 83765 and 84791 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Sereno, JJ.*, concur.

SECOND DIVISION

[G.R. No. 190559. March 7, 2012]

BLUE SKY TRADING COMPANY, INC. and/or JOSE TANTIANSU and LINDA TANTIANSU, *petitioners, vs.* **ARLENE P. BLAS and JOSEPH D. SILVANO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SUBSTANTIAL EVIDENCE OF ACTUAL BREACH IS REQUIRED FROM AN EMPLOYER TO JUSTIFY EMPLOYEE'S DISMISSAL FROM SERVICE BASED ON ALLEGED PARTICIPATION IN THEFT OF COMPANY PROPERTY; EMPLOYER FAILED TO DISCHARGE THE BURDEN.— In the case at bar, we agree with the petitioners that mere substantial evidence and not proof beyond reasonable doubt is required to justify the dismissal from service of an employee charged with theft of company property. However, we find no error in the CA's findings that the petitioners had not adequately proven by substantial evidence that Arlene and Joseph indeed participated or cooperated in the commission of theft relative to the six missing intensifying screens so as to justify the latter's

termination from employment on the ground of loss of trust and confidence. x x x We note that the parties disagree as to what tasks were actually and regularly performed by Arlene and Joseph. They are at odds as to the issue of whether or not Arlene and Joseph had custody of the missing screens. We observe though that neither of the parties presented any documentary evidence, such as employment contracts, to establish their claims relative to the actual nature of Arlene and Joseph's daily tasks. x x x During the entrapment operation conducted by police operatives, Jayde and Helario were caught attempting to sell an ultrasound probe allegedly belonging to Blue Sky. Thereafter, Jayde, Helario and Wilfredo withdrew their complaints for illegal dismissal against the company. Arlene and Joseph, however, pursued their claims. Nonetheless, Blue Sky construed the result of the entrapment operation to mean that there was a conspiracy among the five employees to commit theft of company property. In the reply filed by the petitioners to the respondents' position paper filed before the LA, the former alleged that in a letter, Jayde, Helario and Wilfredo implicated Arlene and Joseph as participants and conspirators in the commission of theft. However, we note that the petitioners' allegation was bare since the letter supposedly written by Jayde, Helario and Wilfredo was not offered as evidence. Further, Blue Sky alleged that the ultrasound probe was among the items found missing in the inventory conducted in December 2004. We observe though that the employees were dismissed for alleged theft of six intensifying screens. In the termination notices, no references were made at all to a missing ultrasound probe. x x x [W]e observe that the nature of Arlene and Joseph's regular duties while under Blue Sky's employ and their specific participation in or knowledge of the theft of the intensifying screens remain uncertain. Thus, whether or not Arlene and Joseph had actual custody over company property, we agree with the CA that the petitioners had failed to establish by substantial evidence the charges which led to Arlene and Joseph's dismissal from service.

2. ID.; ID.; ID.; ID.; EMPLOYER MAY IMPOSE PREVENTIVE SUSPENSION AGAINST EMPLOYEES PENDING INVESTIGATION OF ALLEGED THEFT COMMITTED AGAINST THE COMPANY.— We, however, find no merit in the challenge made by Arlene and Joseph against the legality

of the preventive suspension imposed by Blue Sky upon them pending the investigation of the alleged theft. In *Mandapat v. Add Force Personnel Services, Inc.*, we explained that preventive suspension may be legally imposed on an employee whose alleged violation is the subject of an investigation. The purpose of the suspension is to prevent an employee from causing harm or injury to his colleagues and to the employer. The maximum period of suspension is 30 days, beyond which the employee should either be reinstated or be paid wages and benefits due to him. In Arlene and Joseph's case, Blue Sky issued to them notices to explain on February 3, 2005. They submitted their written explanation the day after and they were dismissed from service on February 5, 2005. While we do not agree with Blue Sky's subsequent decision to terminate them from service, we find no impropriety in its act of imposing preventive suspension upon the respondents since the period did not exceed the maximum imposed by law and there was a valid purpose for the same.

3. ID.; ID.; ID.; AWARD OF SEPARATION PAY IS PROPER WHERE REINSTATEMENT IS IMPRACTIBLE.— If reinstatement proves impracticable, and hardly in the best interest of the parties, perhaps due to the lapse of time since the employee's dismissal, or if the employee decides not to be reinstated, the latter should be awarded separation pay in lieu of reinstatement. In the case at bar, Arlene and Joseph were dismissed from service on February 5, 2005. We find that the lapse of more than seven years already renders their reinstatement impracticable. Further, from the stubborn stances of the parties, to wit, the petitioners' insistence that dismissal was valid on one hand, and the respondents' express prayer for the payment of separation pay on the other, we find that reinstatement would no longer be in the best interest of the contending parties.

4. ID.; ID.; ID.; WHERE DISMISSAL OF EMPLOYEES WAS NOT ATTENDED BY BAD FAITH, MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES CANNOT BE AWARDED.— If there is no evidence to show that the dismissal of an employee had been carried out arbitrarily, capriciously and maliciously and with personal ill-will, moral damages cannot be awarded. If moral damages

cannot be awarded, the consequence is that there can also be no award of exemplary damages and attorney's fees. In the case at bar, albeit we find Arlene and Joseph's dismissal from service as illegal, we cannot attribute bad faith on the part of Blue Sky which merely acted with an intent to protect its interest. Hence, we find as lacking in basis the NLRC's award of ten percent attorney's fees in the respondents' favor.

5. ID.; ID.; ID.; CORPORATE OFFICERS CANNOT BE HELD SOLIDARILY LIABLE FOR EMPLOYEES' DISMISSAL IN THE ABSENCE OF PROOF THAT THEY ACTED WITH MALICE.— As a general rule, a corporate officer cannot be held liable for acts done in his official capacity because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members. In illegal dismissal cases, corporate officers may only be held solidarily liable with the corporation if the termination was done with malice or bad faith. We find that the aforementioned circumstance did not obtain in the case of Jose and Linda relative to Arlene and Joseph's dismissal from service.

APPEARANCES OF COUNSEL

Santiago Cruz and Sarte Law Office for petitioners.
Public Attorney's Office for respondents.

D E C I S I O N

REYES, *J.*:

The Case

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the October 26, 2009 Decision[2] and the December 14, 2009 Resolution[3] of the Court

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[1] *Rollo*, pp. 28-48.

[2] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose Catral Mendoza (now a member of this court) and Marlene Gonzales-Sison, concurring; *id.* at 10-23.

[3] *Id.* at 25.

of Appeals (CA) in CA G.R. SP No. 108432. The dispositive portion of the assailed decision reads:

> **WHEREFORE**, premises considered, the instant Petition is **GRANTED**. The challenged resolution of the NLRC dated 30 January 2009 is hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision of the NLRC dated 29 November 2007 is hereby **REINSTATED**.
>
> SO ORDERED.[4]

The assailed resolution denied the petitioners' Motion for Reconsideration[5] to the foregoing.

Antecedent Facts

Petitioner Blue Sky Trading Company, Inc. (Blue Sky) is a duly registered domestic corporation engaged in the importation and sale of medical supplies and equipment. Petitioner Jose G. Tantiansu, Jr. (Jose) is Blue Sky's vice president for operations while petitioner Linda G. Tantiansu (Linda) is its assistant corporate secretary. The respondents Arlene P. Blas (Arlene) and Joseph D. Silvano (Joseph) were regular employees of Blue Sky and they respectively held the positions of stock clerk and warehouse helper before they were dismissed from service on February 5, 2005.

On January 29, 2005, Lorna N. Manalastas (Lorna), Blue Sky's warehouse supervisor, wrote Jose a memorandum[6] informing the latter that six pairs of intensifying screens were missing. Lorna likewise stated that when a certain "Boy" conducted an inventory on October 2004, the screens were still completely accounted for.

On January 31, 2005, Helario Adonis, Jr. (Helario), warehouse personnel, was summoned by Linda, Jose's wife Alice Tantiansu, and human resources department head Jean B. De La Paz (Jean).

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[4] *Id.* at 23.

[5] *Id.* at 220-229.

[6] *Id.* at 86.

Helario was asked to admit his participation in the theft of the missing screens. While he was offered to be paid a separation pay if he would confess complicity with the alleged theft, he pleaded utter innocence.

On February 1, 2005, Jean notified Helario of his termination from service on the ground of his failure to properly account for and maintain a balance of the company's stock inventories, hence, resulting in Blue Sky's loss of trust and confidence in him.[7] The day after, Blue Sky promptly filed with the Department of Labor and Employment (DOLE) an establishment termination report[8] indicating therein Helario's dismissal from service for cause.

On February 3, 2005, Jean issued notices to explain/preventive suspension[9] to Arlene, Joseph, delivery personnel Jayde Tanoan (Jayde) and maintenance personnel/driver Wilfredo Fasonilao (Wilfredo). The notices informed them that they were being accused of gross dishonesty in connection with their alleged participation in and conspiracy with other employees in committing theft against company property, specifically relative to the loss of the six intensifying screens. They were placed under preventive suspension pending investigation and were thus required to file their written explanations within 48 hours from receipt of the notices.

On February 4, 2005, Arlene submitted to Jean a handwritten memorandum denying knowledge or complicity with the theft of the intensifying screens. In part, the memorandum reads:

I'm not the supervisor of that dep't. para tanungin sa lahat ng nangyayari. Second, hindi naman ako ang nag-inventory ng stocks na yan. Third, nag-oout lang ako ng stocks kapag wala sila at kailangan na ang stocks. And lastly, ano ba talaga ang trabaho ko dito, kc all I know is pag-re-record ng stocks but parang lumalabas guard ako na kailangan kong malaman ang lahat ng

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[7] *Id.* at 88.

[8] *Id.* at 89.

[9] *Id.* at 91-95.

kilos at galaw ng lahat ng employee dito. Dahil ako lagi ang tinatanong tungkol sa nangyayari sa mezz. Bakit ako lang ba ang tao doon? So it means that, dapat lahat kami ay may memo para mag-explain regarding that matter. Maging fair naman kayo sa akin.

Anyway, regarding sa nawawalang IS, ang alam ko inim-ventory ni Kuya Boy yan last Oct. According to him, complete daw lahat yun. Nang bumaba si Sir Jun mga last week ng Dec. para magpalinis ng stocks, na-found out nya na kulang ang stocks. So we did, we compare the bincard to the stockcard. But tally silang pareho. Kaya, we did we trace it is sa mga possible records like shipment sa Cebu or sales. But wala doon. Ang naiisip naming dahilan ay baka nagpakabit si Ate Lorna ng cassette with IS sa technical and she forgot to report it. Yun lang ang possible reason na alam ko. At wala na akong alam pang iba. x x x[10]

On the other hand, Joseph proffered the following explanation:

Tungkol po sa nawawalang intensifying screen, wala po akong alam. Kasi po sa messanin[,] pumapasok lang po ako pag may inutos o may pagagawa, tsaka hindi po ako naghahanda ng lumang stocks. Nagbababa po kami ng stock at nag-aakyat sa 2nd flor (sic) *pag kami po ay inutusan ng nakakataas sa akin o may katungkulan. Yun lang po ang aking trabaho sa mesanin. Eto lang po ang aking masasabi.*[11]

Jayde and Wilfredo also filed their written explanations denying any involvement in the theft which took place and professing their dedication and loyalty to Blue Sky.[12]

On February 5, 2005, Jean issued to Arlene, Joseph, Jayde and Wilfredo notices of dismissal for cause[13] stating therein that evidence that they had conspired with each other to commit theft against company property was too glaring to ignore. Blue Sky had lost its trust and confidence on them and as an act of self-preservation, their termination from service was in order.

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[10] *Id.* at 96.

[11] *Id.* at 98.

[12] *Id.* at 97, 99.

[13] *Id.* at 100-103.

On February 7, 2005, Blue Sky filed with the DOLE an establishment termination report stating therein the dismissal of Arlene, Joseph, Jayde and Wilfredo.[14]

On February 8, 2005, Arlene, Joseph, Helario, Jayde and Wilfredo filed with the National Labor Relations Commission (NLRC) a complaint for illegal dismissal and suspension, underpayment of overtime pay, and non-payment of emergency cost of living allowance (ECOLA), with prayers for reinstatement and payment of full backwages. The complaint was docketed as NLRC NCR Case No. 00-02-01351-05.

Meanwhile, an entrapment operation was conducted by the police during which Jayde and Helario were caught allegedly attempting to sell to an operative an ultrasound probe worth around ₱400,000.00 belonging to Blue Sky. On April 22, 2005, Quezon City Inquest Prosecutor Arleen Tagaban issued a resolution[15] recommending the filing in court of criminal charges against Jayde and Helario.

On May 2005, before the complaint which was filed with the NLRC can be resolved, Helario, Jayde and Wilfredo executed affidavits of desistance[16] stating therein that their termination by Blue Sky was for cause and after observance of due process.

The Ruling of the Labor Arbiter

On November 17, 2005, Labor Arbiter Gaudencio P. Demaisip, Jr. (LA Demaisip) dismissed the complaint relative to Helario, Jayde and Wilfredo as a consequence of their filing of the affidavits of desistance. As to Arlene and Joseph, LA Demaisip denied their claims of illegal suspension and dismissal and for payment of ECOLA and overtime pay based on the following grounds:

> [T]he duties of Ms. Blas [Arlene] was to take out stocks. Also, Mr. Silvano's [Joseph] work consisted of removing, storing, or furnishing of "stocks" or supplies.

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[14] *Id.* at 104-105.

[15] *Id.* at 141.

[16] *Id.* at 139-140, 142-145.

Further, Ms. Blas [Arlene] was tasked to make written monitoring of "stocks" or supplies.

Complainants therefore, are charged with the care and custody of respondents' property. They may not be given such functions or allowed entrance and exit from respondents' *bodega* if they were untrustworthy.

Indeed, the functions consisting of removing, storing, furnishing, monitoring and gaining ingress to and egress from the "*bodega*", where the "stocks" or supplies are kept, involved trust and confidence.

Article 282 of the Labor Code allows the employer to terminate the services of the employees, among others, for breach of trust and confidence.

Loss of confidence however, apply (sic) to the following: x x x (2) to those situations where the employee is routinely charged with the care and custody of the employer's money or property such as auditors, cashier; property custodians, or those who regularly handle significant amount of money or property.

The dismissal must rest on actual breach of duty committed by the employee.

Further, proof beyond reasonable doubt is not necessary. It is sufficient if there is some basis for such loss of confidence.

x x x x x x x x x

The basis, for the dismissal of the complainants, is the fact that six (6) pairs of assorted sizes of Intensifying Screen of the company at the *bodega* were lost x x x.

An entrapment was conducted against Tano-an [Jayde] and Adonis [Helario] x x x:

x x x x x x x x x

Simply put, the contention, about the missing items or supplies, is credible and reliable.

It is not necessary that proof of taking or conspiracy must exist.

The existence of the fact, that items or supplies were missing at the *bodega* of the company, would suffice to prove loss of confidence.

Complainants failed in their duties to exercise utmost protection, care, or custody of respondent's property. Hence, their dismissal from the service is warranted.

x x x x x x x x x

Claims for ECOLA and overtime pay were not discussed by the complainants[,] hence, they should be denied.[17]

Arlene and Joseph assailed before the NLRC the decision rendered by LA Demaisip.[18]

The Rulings of the NLRC

On November 29, 2007, the NLRC ordered the reinstatement of Arlene and Joseph and the payment to them of full backwages and ten percent attorney's fees. The decision, in part, reads:

[T]he respondents [Blue Sky, Jose and Linda] accused complainants [Arlene and Joseph] of theft of company property. It was, thus, incumbent upon the respondents to prove the alleged theft by the appellants [Arlene and Joseph] with clear and substantial evidence. A reading of the record will, however, show that respondents have not presented any evidence to show the involvement of the complaint [sic] Arlene Blas and Joseph Silvano x x x in the theft. To start with, appellants were not caught red handed. No specific acts or deeds were imputed upon appellants to prove the allegation that they committed theft against the respondents. While there may be articles which may have been lost, the respondents have not shown how these were lost and how appellants participated in the theft. The fact that appellants had access to the lost items is not sufficient to prove their guilt. As shown, there were several other persons who had unlimited access to the warehouse where the items stolen were stacked. No witnesses were also presented implicating appellants in the theft.

As it is, all respondents have are general allegations that appellants conspired with the other complainants in stealing the lost items. Allegations, no matter how convincing they may sound, while they remain to be so, cannot be considered as clear and substantial evidence

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[17] *Id.* at 154-156.

[18] *Id.* at 157-162.

sufficient to justify the dismissal of an employee. While proof beyond reasonable doubt is not required, still respondents should have presented substantial evidence to support the grounds they have relied upon. x x x

x x x x x x x x x

Finally, [w]e do not see appellants as holding positions of trust and confidence. Before an employee may be dismissed due to willful breach of trust, he must hold a position of trust and confidence (*Estiva [v]s. NLRC, G.R. No. 95145, August 5, 1993*). A position of trust and confidence is one where a person is entrusted with confidence on delicate matters, or with the custody, handling, or care and protection of the employer's property (*Panday vs. NLRC, G.R. No. 67664, May 20, 1994*) and/or funds (*Gonzales vs. NLRC, 335 SCRA 197*).

Appellant Arlene Blas is a Stock Clerk while Joseph Silvano is a warehouse helper. While they may have access to the lost items, they were not entrusted with confidence on delicate matters or custody of the employer's property. They do not have the authority to withdraw, transfer or release items in the warehouse. They are mere low keyed employees who deal with the handling of stocks only when ordered to by their superiors.[19]

Both parties filed their motions for reconsideration[20] to the foregoing.

Claiming that their relations with Blue Sky had been strained, Arlene and Joseph sought the payment of separation pay, in *lieu* of reinstatement. Further, they lamented that the NLRC failed to specifically address the issue relative to their monetary claims. Hence, they reiterated the said claims, in addition to service incentive leave and 13th month pay for the year 2005, arguing that the burden to prove payment of benefits pertained to Blue Sky which miserably failed in this regard.

On the other hand, Blue Sky averred that substantial evidence existed to support its claim that Arlene and Joseph participated in, or at the least knew about, the theft of the missing screens.

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[19] *Id.* at 171-173.

[20] *Id.* at 175-182, 183-186.

On January 30, 2009, the NLRC issued a resolution reversing its earlier decision and reinstating LA Demaisip's dismissal of the complaint filed by Arlene and Joseph on the basis of the following:

> In our Decision promulgated on November 29, 2007, we advanced the view that complainants Blas [Arlene] and Silvano [Joseph] were ordinary employees not occupying positions of trust, without however taking a profound appreciation of the fact that complainants' duties as "stock clerk" and "warehouse helper" routinely involved having unlimited access to company's properties and stocks. The fact that same properties which were subject of losses and thievery as established from the subsequent entrapment operations conducted by the respondents with the assistance of PNP operatives against the two (2) other complainants, namely Jayde [Tano-an] and Helario Adonis, who are presently facing charges for attempting to sell respondents' property, convinced this Commission to reconsider its previous finding and be in agreement with the respondents' position.
>
> x x x x x x x x x
>
> While we are not unmindful of the fact that complainants Blas and Silvano were not part of the group who were apprehended during the entrapment operations, however, had they not been remiss in their respective duties [as] "stock clerk" and "warehouse helper" or not aided their former co-workers Tano-an and Adonis, thievery or losses of company's property could not have been committed.
>
> x x x x x x x x x
>
> The loss of company's property having been substantially proven, complainants Blas [Arlene] and Silvano [Blas] cannot just make a general denial and wash their hands clean. Their termination not only due to loss of trust but also for gross neglect of duties is therefore found justified. x x x
>
> x x x x x x x x x
>
> Finally, as regards complainants' claim for alleged unpaid 13th month pay and service incentive leave pay for 2005, contrary evidence however showed that respondents [Blue Sky] had paid the said claims as shown by the payment of their final monetary benefits which the complainants had duly received.[21]

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[21] *Id.* at 192-193. (Citations omitted)

Aggrieved, Arlene and Joseph filed before the CA a Petition for *Certiorari*[22] under Rule 65 of the Rules of Court to challenge the above quoted NLRC resolution.

The Ruling of the CA

In the decision rendered on October 26, 2009, which is now the subject of the instant petition, the CA found merit in the claims advanced by Arlene and Joseph. In reversing the January 30, 2009 Resolution of the NLRC, the CA ratiocinated that:

> Prefatorily, the basic requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. A position of trust and confidence is one where a person is entrusted with confidence on delicate matters, or with the custody, handling or care and protection of the employer's property. And, in order to constitute a just cause for dismissal, the act complained of must be work-related and shows that the employee concerned is unfit to continue to work for the employer.
>
> In *General Bank and Trust Company vs. Court of Appeals*, the Supreme Court laid down the following guidelines for the application of the doctrine of loss of confidence as a justification in the termination of erring employees, *viz*:
>
> (a) loss of confidence which should not be simulated;
> (b) it should not be used as a subterfuge for causes which are improper, illegal or unjustified;
> (c) it should not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and
> (d) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith.
>
> x x x x x x x x x
>
> To [o]ur mind, the NLRC is correct insofar as it considered the nature of [p]etitioner BLAS and [p]etitioner SILVANO as stock clerk and warehouse helper, respectively, as positions of trust and confidence. On account of their positions in the company, the [p]etitioners were given access to the [r]espondents' warehouse w[h]ere the company products and goods are kept. Likewise, by the

[22] *Id.* at 195-210.

nature of the work the [p]etitioners performed for the [r]espondents, it is logical to conclude that the former were charged with the custody of [r]espondents' property, thus making their positions as one reposed with trust and confidence.

However, [w]e hold that the [r]espondents failed to sufficiently establish the charge against [p]etitioners which was the basis for its loss of trust and confidence that warranted their dismissal. Concededly, it is settled that proof beyond reasonable doubt is not required in dismissing an employee on the ground of loss of trust and confidence. It is sufficient that there is some basis for such loss of confidence or that there must be some reasonable grounds to believe, if not to entertain the moral conviction that the employee concerned is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position. However, loss of confidence as a valid cause to terminate an employee must nonetheless "rest on actual breach of duty committed by the employee and not on the employer's imagined whim or caprice.

Verily, [w]e are convinced that the [r]espondents failed to adduce any substantial proof showing that the [p]etitioners committed an actual breach of their duty which destroyed the trust and confidence reposed upon them by their employer. Clearly, there is no ample evidence to show that [p]etitioners conspired with the thieves in stealing six (6) pairs of intensifying screens from [r]espondents[']' warehouse. Nor is there any shred of evidence that tends to prove that the [p]etitioners had a direct hand in the larceny committed against the [r]espondents. In fact, the verity of the [p]etitioners' innocence on the thievery committed against the [r]espondents was recognized by the NLRC in the assailed Resolution, *viz*:

x x x x x x x x x

<u>While we are not unmindful of the fact that complainants Blas [Arlene] and Silvano [Joseph] were not part of the group who were apprehended during the entrapment operations</u>, however, had they not been remiss in their respective duties [as] "stock clerk" and "warehouse helper" or not aided their former co-workers Tano-an and Adonis, thievery or losses of company's property could not have been committed. x x x

x x x x x x x x x

The ratiocination of the NLRC in reversing its initial pronouncement is that the [p]etitioners were "remiss" in their duty is flawed. It bears noting that the NLRC offered no explanation to justify this finding nor is there any scintilla of evidence in the records to support the conclusion that the [p]etitioners had aided, expressly or impliedly, their former co-workers in committing theft against the company.[23] (Citations omitted)

The CA denied the petitioners' motion for reconsideration, hence, the instant petition.

The Issues

The petitioners submit the following for resolution:

I.

WHETHER OR NOT THE EVIDENCE ADDUCED BEFORE THE NLRC BY PETITIONERS ARE SUFFICIENT TO ESTABLISH THE CHARGES WHICH WAS (sic) BASIS FOR THE LOSS OF TRUST AND CONFIDENCE AGAINST RESPONDENTS[-]EMPLOYEES.

II.

WHETHER OR NOT THE CA WAS CORRECT IN GRANTING THE PETITION FOR *CERTIORARI* FILED BY RESPONDENTS AND LATER, DENYING PETITIONERS' MOTION FOR RECONSIDERATION.[24]

The Petitioners' Arguments

In *Salvador v. Philippine Mining Service Corporation*,[25] it was ruled that proof beyond reasonable doubt of the employee's misconduct or dishonesty is not required to justify loss of confidence, it being sufficient that there is substantial basis for loss of trust. Thus, an employer should not be held liable for dismissing the services of an employee sincerely believed to have at least known or participated in the commission of theft

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[23] *Supra* note 2, at 18-22.

[24] *Supra* note 1, at 35.

[25] 443 Phil. 878 (2003).

against company property. The employer is not required to present proofs of the employee's actual taking or unlawful possession of company property. In fact, in *Dole Philippines, Inc. v. NLRC, et al.*,[26] the court held that where the dismissal for loss of confidence is based on suspected theft of company property on the part of the employee, it remains a valid cause for dismissal even if the employee is subsequently acquitted.

It is immaterial that Arlene and Joseph were not among those who were entrapped attempting to sell an ultrasound probe to a police operative. The nature of their tasks at Blue Sky and the fact of loss of the intensifying screens dictated Arlene and Joseph's liabilities. Arlene's daily work routine involved (a) receiving and releasing of stocks; and (b) preparing stock cards for purposes of checking and monitoring the items in the warehouse. On the other hand, Joseph carried and moved stocks in and out of the warehouse. The six intensifying screens were discovered missing while Arlene, Joseph, Helario, Jayde and Wilfredo were supposedly performing their tasks, hence, the logical inference that they conspired to commit the theft or at least, knowingly allowed it to happen. Had the employees exercised due or even ordinary diligence to protect company property, no loss would have been incurred. Further, the defense interposed by Arlene in her written explanation that she was not employed by Blue Sky as a security guard, showed her utter lack of concern for the company's welfare, which rendered her undeserving of an employer's trust and confidence.

Findings of fact of quasi-judicial agencies, like the NLRC, are accorded not only respect but even finality when they are supported by substantial evidence.[27] Thus, the CA erred when it ruled that the NLRC gravely abused its discretion in ordering the dismissal of the respondents' complaint.

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[26] 208 Phil. 591 (1983).

[27] *Duldulao v. CA,* G.R. No. 164893, March 1, 2007, 517 SCRA 191, 198. (Citations omitted)

The Respondents' Contentions

In their Comment,[28] the respondents cited Section 1, Rule 45 of the Rules of Court to argue that only questions of law can be raised in a petition for review on *certiorari*. In the case at bar, the petitioners raise a factual question, to wit, the alleged sufficiency of the evidence they presented to justify the dismissal of Arlene and Joseph on the basis of loss of trust and confidence. The petitioners thus call for an examination of the probative value of the evidence offered by the parties, which is beyond the province of a petition filed under Rule 45 of the Rules of Court.

This Court's Ruling

While a petition for review on *certiorari* under Rule 45 of the Rules of Court generally precludes us from resolving factual issues, the instant case falls among the exceptions as the LA, the NLRC and the CA were at odds as to their findings.

We deem it proper to first resolve the procedural challenge interposed by the respondents against the instant petition and we find it lacking in merit.

It bears stating that Rule 45 limits us merely to the review of questions of law raised against the assailed CA decision.[29] Further, the Court is generally bound by the CA's factual findings. The foregoing rules, however, admit of exceptions, among which is when the CA's findings are contrary to those of the trial court or administrative body exercising quasi-judicial functions from which the action originated.[30] The case before us now

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[28] *Rollo*, pp. 236-246.

[29] *Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA 218, 233.

[30] *AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633, 651.

falls under the aforementioned exception as the LA, NLRC and the CA were at odds as to their findings.

Substantial evidence of actual breach by an employee is required from an employer to be able to justify the former's dismissal from service on the basis of an alleged participation in theft of company property. However, in the case at bar, Blue Sky had failed to discharge the burden of proof imposed upon it.

We note that the petitioners essentially raise the sole question of whether they had proven by substantial evidence the charges of theft against Arlene and Joseph which led to the latter's termination from service on the ground of loss of trust and confidence.

We rule in the negative.

In *Functional, Inc. v. Samuel Granfil*,[31] we declared:

> The rule is long and well settled that, in illegal dismissal cases like the one at bench, the burden of proof is upon the employer to show that the employee's termination from service is for a just and valid cause. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them. Often described as more than a mere scintilla, the quantum of proof is substantial evidence which is understood as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise. Failure of the employer to discharge the foregoing *onus* would mean that the dismissal is not justified and therefore illegal.

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[31] G.R. No. 176377, November 16, 2011. (Citations omitted)

Further, in *Baron v. NLRC*,[32] we held that for there to be a valid dismissal based on loss of trust and confidence, the breach of trust must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse.

In the case at bar, we agree with the petitioners that mere substantial evidence and not proof beyond reasonable doubt is required to justify the dismissal from service of an employee charged with theft of company property. However, we find no error in the CA's findings that the petitioners had not adequately proven by substantial evidence that Arlene and Joseph indeed participated or cooperated in the commission of theft relative to the six missing intensifying screens so as to justify the latter's termination from employment on the ground of loss of trust and confidence.

Blue Sky alleged that Arlene, who was a stock clerk, and Joseph, a warehouse helper, had free access to the missing items. Arlene, who kept the stock cards, was supposed to be monitoring on a daily basis the incoming and outgoing stocks stored in or taken out of the warehouse. Joseph took the stocks from the warehouse to the vehicles for transport or delivery purposes. Arlene and Joseph averred otherwise. They insisted that they were mere lowly employees who did not have actual custody of company property, specifically, of the missing items. Arlene claimed that she was not responsible for conducting inventories and that she released stocks only when urgently necessary and only in the absence of those authorized to do so. Joseph alleged that he only went to the mezzanine, where the missing items were stored, when ordered to do so by his superiors.

We note that the parties disagree as to what tasks were actually and regularly performed by Arlene and Joseph. They are at odds as to the issue of whether or not Arlene and Joseph had custody of the missing screens. We observe though that neither of the parties presented any documentary evidence, such as employment contracts, to establish their claims relative to the

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[32] G.R. No. 182299, February 22, 2010, 613 SCRA 351.

actual nature of Arlene and Joseph's daily tasks. It bears emphasizing though that the photocopies of the identification cards issued by Blue Sky, which were annexed to the respondents' position paper filed with the LA, indicated that Arlene was assigned at the customer service department while Joseph was part of the warehouse department.[33]

During the entrapment operation conducted by police operatives, Jayde and Helario were caught attempting to sell an ultrasound probe allegedly belonging to Blue Sky. Thereafter, Jayde, Helario and Wilfredo withdrew their complaints for illegal dismissal against the company. Arlene and Joseph, however, pursued their claims. Nonetheless, Blue Sky construed the result of the entrapment operation to mean that there was a conspiracy among the five employees to commit theft of company property. In the reply filed by the petitioners to the respondents' position paper filed before the LA, the former alleged that in a letter, Jayde, Helario and Wilfredo implicated Arlene and Joseph as participants and conspirators in the commission of theft.[34] However, we note that the petitioners' allegation was bare since the letter supposedly written by Jayde, Helario and Wilfredo was not offered as evidence. Further, Blue Sky alleged that the ultrasound probe was among the items found missing in the inventory conducted in December 2004. We observe though that the employees were dismissed for alleged theft of six intensifying screens. In the termination notices, no references were made at all to a missing ultrasound probe.

Further, we notice that both parties mentioned a certain "Boy" who conducted the inventory in October 2004. There is no dispute that at that time, the six intensifying screens were still completely accounted for. Further, Arlene and Joseph claimed that it was Lorna who had control and custody of the stocks as she was the warehouse supervisor. "Boy" and Lorna were not called upon by either of the parties to corroborate their claims. "Boy" and Lorna could have provided important information

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[33] *Rollo*, pp. 118 and 120.

[34] *Id.* at 135.

as to the time line and the manner the intensifying screens were lost. If "Boy" and Lorna remain under Blue Sky's employ, it is the company which is in a better position to require the two to execute affidavits relative to what they know about the missing screens.

The petitioners also argue that if Arlene and Joseph had not been grossly negligent in the performance of their duties, Blue Sky would not have incurred the loss. We observe though that in the notices sent to Arlene and Joseph, first charging them with theft, and later, informing them of their dismissal from service, gross negligence was not stated therein as a ground. Hence, Arlene and Joseph could not have defended themselves against the charge of gross negligence. They cannot be dismissed on that ground lest due process be violated.

Only the following had been established without dispute: (a) the fact of loss of the six intensifying screens; (b) an entrapment operation was successfully conducted by the police operatives who caught Jayde and Helario in the act of attempting to sell an ultrasound probe which allegedly belonged to Blue Sky; and (c) Jayde, Helario and Wilfredo filed their affidavits of desistance to withdraw their complaints for illegal dismissal against Blue Sky while Arlene and Joseph pursued their complaints.

In its November 29, 2007 Decision, the NLRC found that Arlene and Joseph, a stock clerk and a warehouse helper, respectively, did not have unlimited access to or custody over Blue Sky's property. The CA, in the decision and resolution assailed herein, while ordering the reinstatement of the November 29, 2007 NLRC Decision, found that Arlene and Joseph exercised custody over company property. Be that as it may, we observe that the nature of Arlene and Joseph's regular duties while under Blue Sky's employ and their specific participation in or knowledge of the theft of the intensifying screens remain uncertain. Thus, whether or not Arlene and Joseph had actual custody over company property, we agree with the CA that the petitioners had failed to establish by substantial evidence the charges which led to Arlene and Joseph's dismissal from service.

While we empathize with Blue Sky's loss and understand that its actions were merely motivated by its intent to protect the interests of the company, no blanket authority to terminate all employees whom it merely suspects as involved in the commission of theft resides in its favor. We thus reiterate the doctrine enunciated in *Functional, Inc.*[35] that the employer's case succeeds or fails on the strength of its evidence and not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them.

Notwithstanding our affirmation of the CA's finding that the petitioners had failed to discharge the burden of proof imposed upon them to justify the dismissal of Arlene and Joseph, we deem it proper to modify the assailed decision and resolution in the manner to be discussed hereunder.

Blue Sky committed no impropriety in imposing preventive suspension against Arlene and Joseph pending investigation of the theft allegedly committed against the company.

We, however, find no merit in the challenge made by Arlene and Joseph against the legality of the preventive suspension imposed by Blue Sky upon them pending the investigation of the alleged theft.

In *Mandapat v. Add Force Personnel Services, Inc.*,[36] we explained that preventive suspension may be legally imposed on an employee whose alleged violation is the subject of an investigation. The purpose of the suspension is to prevent an employee from causing harm or injury to his colleagues and to the employer. The maximum period of suspension is 30 days, beyond which the employee should either be reinstated or be paid wages and benefits due to him.

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[35] *Supra* note 31.

[36] G.R. No. 180285, July 6, 2010, 624 SCRA 155.

In Arlene and Joseph's case, Blue Sky issued to them notices to explain on February 3, 2005. They submitted their written explanation the day after and they were dismissed from service on February 5, 2005. While we do not agree with Blue Sky's subsequent decision to terminate them from service, we find no impropriety in its act of imposing preventive suspension upon the respondents since the period did not exceed the maximum imposed by law and there was a valid purpose for the same.

In *lieu* of reinstatement, Arlene and Joseph are entitled to an award of separation pay.

If reinstatement proves impracticable, and hardly in the best interest of the parties, perhaps due to the lapse of time since the employee's dismissal, or if the employee decides not to be reinstated, the latter should be awarded separation pay in lieu of reinstatement.[37]

In the case at bar, Arlene and Joseph were dismissed from service on February 5, 2005. We find that the lapse of more than seven years already renders their reinstatement impracticable. Further, from the stubborn stances of the parties, to wit, the petitioners' insistence that dismissal was valid on one hand, and the respondents' express prayer for the payment of separation pay on the other, we find that reinstatement would no longer be in the best interest of the contending parties.

Arlene and Joseph are entitled to the payment of ECOLA, but not to 13th month, service incentive leave and overtime pay.

It is well-settled that in labor cases, the burden of proving payment of monetary claims rests on the employer.[38]

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[37] *St. Luke's Medical Center, Inc. and Robert Kuan v. Notario,* G.R. No. 152166, October 20, 2010, 634 SCRA 67, 80-81. (Citation omitted)

[38] *Smart Communications, Inc. v. Astorga,* G.R. No. 148132, January 28, 2008, 542 SCRA 434, 453. (Citation omitted)

We find nothing in the records to indicate that the petitioners had indeed paid ECOLA to Arlene and Joseph.

In the resolution issued on January 30, 2009, the NLRC found proof by way of the petitioners' annex to their position paper that Arlene and Joseph already received their 13th month and service incentive leave pay for the year 2005.[39] The respondents had not specifically refuted the NLRC's findings, hence, we sustain the same.

Anent the respondents' claim for overtime pay, we find no ample basis to grant it as they had not offered any proof to show that they in fact rendered such service.

The decision rendered by the NLRC on November 29, 2007, which the CA affirmed, did not award in favor of Arlene and Joseph moral and exemplary damages. Consequently, we delete the award in the respondents' favor of ten percent attorney's fees.

If there is no evidence to show that the dismissal of an employee had been carried out arbitrarily, capriciously and maliciously and with personal ill-will, moral damages cannot be awarded.[40] If moral damages cannot be awarded, the consequence is that there can also be no award of exemplary damages and attorney's fees.[41]

In the case at bar, albeit we find Arlene and Joseph's dismissal from service as illegal, we cannot attribute bad faith on the part of Blue Sky which merely acted with an intent to protect its interest. Hence, we find as lacking in basis the NLRC's award of ten percent attorney's fees in the respondents' favor.

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[39] *Supra* note 21, at 193.

[40] *Chaves v. NLRC,* G.R. No. 166382, June 27, 2006, 493 SCRA 434.

[41] *Pacquing v. Coca-Cola Philippines, Inc.,* G.R. No. 157966, January 31, 2008, 543 SCRA 344, 363. (Citation omitted)

Jose and Linda cannot be held solidarily liable for the dismissal of Arlene and Joseph in the absence of proof that they acted with malice and bad faith.

As a general rule, a corporate officer cannot be held liable for acts done in his official capacity because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members.[42] In illegal dismissal cases, corporate officers may only be held solidarily liable with the corporation if the termination was done with malice or bad faith.[43] We find that the aforementioned circumstance did not obtain in the case of Jose and Linda relative to Arlene and Joseph's dismissal from service.

IN VIEW OF THE FOREGOING, the October 26, 2009 Decision and December 14, 2009 Resolution issued by the Court of Appeals, finding that the dismissal from service of respondents Arlene and Joseph was illegal and awarding in their favor full backwages, are **AFFIRMED** but with the following **MODIFICATIONS**:

(a) Blue Sky is directed to pay ECOLA and separation pay to the respondents;

(b) The award in favor of the respondents of ten percent attorney's fees made by the National Labor Relations Commission in its November 29, 2007 Decision and which was affirmed by the Court of Appeals in the herein assailed decision and resolution is deleted; and

(c) Pursuant to our ruling in *Eastern Shipping Lines, Inc. v. CA*,[44] an interest of 12% per annum is imposed on the total sum of the monetary award to be computed from the date of finality of this Decision until full satisfaction thereof.

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[42] *Culili v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 165381, February 9, 2011, 642 SCRA 338, 365.

[43] *Id.*

[44] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

The case is remanded to the National Labor Relations Commission which is hereby **ORDERED to COMPUTE** the monetary benefits awarded in accordance with this Decision and to submit its compliance thereon within thirty (30) days from notice hereof.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 195239. March 7, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BEN RUBIO *y* ACOSTA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; EVIDENCE; GUIDING PRINCIPLES IN RESOLVING RAPE CASES.— In deciding rape cases, We are guided by these three well-entrenched principles: (a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHERE THE TRIAL COURT'S ASSESSMENT IS FINAL AND BINDING ON THE COURT.— When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity

to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly. x x x There is no showing that the trial court's findings were tainted with arbitrariness or oversight; hence, the trial court's finding as to the credibility of the victim is final and binding on this Court.

3. ID.; ID.; ID.; INCONSISTENT REMARKS OF THE WITNESS DOES NOT IMPAIR HER CREDIBILITY.— Although there are inconsistencies in AAA's testimony, inaccuracies and inconsistencies in the rape victim's testimony are to be expected. This Court finds that these inconsistencies are not material to the instant case. We held, "Rape victims are not expected to make an errorless recollection of the incident, so humiliating and painful that they might in fact be trying to obliterate it from their memory. Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party."

4. CRIMINAL LAW; RAPE; ELEMENTS OF QUALIFIED RAPE, DULY PROVED.— The testimony of AAA stated that accused-appellant had carnal knowledge with her, and, thus, being AAA's father, he is presumed to have employed force and/or intimidation. The fear towards her father was more than enough to intimidate her to submit to his lewd advances without shouting for help. The sole testimony of a rape victim, if credible, suffices to convict. The complainant's testimony—if credible, natural, convincing, and consistent with human nature and the normal course of things—may suffice to support a conviction of rape. This Court finds that the testimony of AAA is straightforward and convincing with no inconsistency with regard to the material elements of the crime of rape. Furthermore, the aggravating circumstances of minority and relationship were stipulated upon during pre-trial; thus, there is no further need to prove them during trial.

5. ID.; ID.; VICTIM'S FAILURE TO SHOUT OR OFFER RESISTANCE IS NOT MATERIAL IN QUALIFIED RAPE.— Accused-appellant seeks to deny the charge against him by stating that the victim did not shout during the alleged bestial act. The Court has declared repeatedly that "[f]ailure to shout or offer tenacious resistance [does] not make voluntary [the victim's] submission to [the perpetrator's] lust. Besides, physical resistance is not an essential element of rape."

6. ID.; ID.; WHERE MEDICAL FINDINGS CORROBORATE COMMISSION OF RAPE.— We must bear in mind that "a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime. In fact, a doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape." The presence of healed or fresh hymenal laceration is not an element of rape. However, it is the best physical evidence of forcible defloration. Thus, the findings of Dr. Reyes corroborate and support the testimony of AAA.

7. ID.; ID.; QUALIFIED RAPE; PROPER PENALTY.— Since all the elements of qualified rape were duly alleged and proved during the trial, the proper penalty should be death according to Article 266-B of the RPC. However, with the effectivity of Republic Act No. 9346, entitled *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, the imposition of the supreme penalty of death has been prohibited. Pursuant to Section 2 of the Act, the penalty to be meted out should be *reclusion perpetua* without eligibility for parole.

8. ID.; ID.; ID.; CIVIL LIABILITY.— The trial court correctly awarded PhP 75,000 as civil indemnity, but the amount of moral and exemplary damages awarded has to be modified consonant to current jurisprudence. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape. Moral damages are automatically granted in a rape case without need of further proof other than the fact of its commission, for it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award. According to prevailing jurisprudence, the amount of moral damages should be PhP 75,000. Likewise, exemplary damages should have been PhP 30,000, and this is awarded in order to serve as 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

VELASCO, JR., *J.*:

The Case

This is an appeal from the July 26, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03489, which affirmed *in toto* the June 30, 2008 Decision[2] in Criminal Case No. 117310-H of the Regional Trial Court (RTC), Branch 261 in Pasig City. The RTC found accused Ben Rubio *y* Acosta (Rubio) guilty beyond reasonable doubt of the crime of Rape.

The Facts

On January 6, 2006, Rubio was charged before the RTC with qualified rape. The accusatory portion of the Information provides:

> On or about January 8, 2000, in Pasig City and within the jurisdiction of this Honorable Court, the defendant, being her father, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with [AAA],[3] 15 years old, against her will and consent.
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> Contrary to Law.[4]

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[1] *Rollo*, pp. 2-19. Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Estela M. Perlas-Bernabe (now also a member of this Court).

[2] CA *rollo*, pp. 80-84. Penned by Judge Agnes Reyes Carpio.

[3] The name and other personal circumstances tending to establish the victim's identity and those of her immediate family are 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.

[4] CA *rollo*, p. 14.

Upon arraignment, Rubio pleaded "not guilty." During the pre-trial conference, Rubio admitted being the father of private complainant AAA and that she was under eighteen (18) years of age when the alleged rape happened. Trial ensued.

Through the testimony of AAA, it was established that on January 8, 2000 at around two o'clock in the afternoon, she was sleeping inside their house with her two-year old sister and three-year old brother, when the accused approached her and removed her shorts and panty. AAA tried to push him away but he was too strong, and he succeeded in inserting his penis inside her vagina. AAA continued resisting despite being afraid that the accused would hurt her. After some time, the accused ejaculated outside her vagina.

At around four o'clock in the afternoon of the same day, AAA went to a neighbor, a certain "*Kuya* Gene" who is a *Barangay Tanod*, and informed him that she was raped by her own father. They then proceeded to the *Barangay* Hall and to the Police Headquarters to file a complaint against her father.[5]

AAA further testified that she did not tell her mother about the incident, because she knew the latter would not believe her. AAA averred that she was first raped by her father in 1993, and when she reported this to her mother, she was casually told to forget about the incident, because it would bring shame to their family.[6]

Dr. Emmanuel Reyes, a medico-legal expert who examined the private complainant after the alleged rape incident, testified that he found a shallow-healed laceration at a three o'clock position as well as a deep-healed laceration at a six o'clock position on the complainant's labia minora which showed that she had been subjected to numerous sexual assaults.[7]

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[5] TSN, May 23, 2000, pp. 5-12.

[6] CA *rollo*, p. 81.

[7] TSN, June 24, 2003, pp. 3-6.

For the defense, Rubio took the witness stand. He described the place where the alleged rape occurred as a small house made of wood with one room, and a floor area of around 10 x 12 meters. At that time, three families were occupying the house including the complainant's grandmother, aunt, uncle, and cousin. Considering the cramped space, the accused asserted that if anything happened within its confines, such as rape, it could be easily noticed by other persons in the room. He also declared that AAA, sometime in 1991, threatened to kill him because of his alleged womanizing.[8]

Rulings of the RTC and the CA

On June 30, 2008, the RTC rendered its Decision finding the accused guilty of qualified rape, the dispositive portion of which reads:

> WHEREFORE, in light of the foregoing considerations, the prosecution having proved the guilt of the defendant BEN RUBIO *y* ACOSTA beyond reasonable doubt, he is hereby meted out the penalty of *Reclusion Perpetua* without eligibility of parole. Accused is likewise ordered to pay the victim the sum of Seventy Five Thousand Pesos (₱75,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages without necessity of proving the same. An amount of Twenty Five Thousand Pesos (₱25,000.00) as exemplary damages is also in order to deter fathers with perverse behavior from sexually abusing their daughters.
>
> The Warden of Nagpayong City Jail, Pasig City, Metro Manila is hereby directed to immediately transfer the defendant to the Bureau of Corrections, New Bilibid Prisons, Muntinlupa.
>
> SO ORDERED.[9]

Rubio filed an appeal with the CA, which affirmed *in toto* the decision of the RTC. The decretal portion of the July 26, 2010 Decision of the CA reads:

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[8] TSN, November 23, 2006, pp. 3-7; September 26, 2007, pp. 3-12.

[9] CA *rollo*, p. 104.

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby ordered DISMISSED, and the appealed decision is AFFIRMED *in toto*.[10]

Hence, We have this appeal. The Office of the Solicitor General, for the People and by Manifestation and Motion, opted not to file a supplemental brief. Accused-appellant entered a similar manifestation. Thus, in resolving the instant appeal, We consider the issues and arguments he earlier raised in his Brief for the Accused-Appellant before the CA.

Accused-appellant raises the following issues for Our consideration:

I. THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED; AND

II. THE COURT *A QUO* GRAVELY ERRED IN REJECTING THE ACCUSED-APPELLANT'S DEFENSE.[11]

Our Ruling

We uphold the ruling of the CA.

Guiding Principles in Rape Cases

In deciding rape cases, We are guided by these three well-entrenched principles:

(a) an accusation for rape is easy to make, difficult to prove and even more difficult to disprove; (b) in view of the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost caution; and (c) the evidence of the prosecution must stand on its own merits and cannot draw strength from the weakness of the evidence for the defense.[12]

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[10] *Rollo*, p. 18.

[11] *Id.* at 6-7.

[12] *People v. Marcos*, G.R. No. 185380, June 18, 2009, 589 SCRA 661, 669.

As a result of these guiding principles, the credibility of the victim becomes the single most important issue.[13]

Core Issue: Credibility of the Victim-Complainant

When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[14] The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[15] As this Court held in *People v. Gabrino*:

> We have held time and again that "the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality." As We have reiterated in the recent *People v. Combate*, where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, then We do not disturb and interfere with its assessment of the facts and the credibility of the witnesses. This is clearly because the judge in the trial court was the one who personally heard the accused and the witnesses, and observed their demeanor as well as the manner in which they testified during trial. Accordingly, the trial court, or more particularly, the RTC in this case, is in a better position to assess and weigh the evidence presented during trial.[16]

Accused-appellant alleges that the testimony of the victim is replete with material inconsistencies and questions her credibility, to wit:

1. AAA first testified that she returned to their house on September 15, 1997[17] but during cross-examination she stated that she returned to the house of her parents in 1999.[18]

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[13] *Id*.

[14] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 671.

[15] *Id*.

[16] G.R. No. 189981, March 9, 2011, 645 SCRA 187, 193-194; citations omitted.

[17] TSN, May 23, 2000, p. 6.

[18] TSN, January 15, 2001, p. 7.

2. AAA alleged at one point that the accused-appellant had physically beaten her once prior to the sexual assault subject of the instant case[19] but she then categorically stated that accused-appellant never laid a hand on her.[20]

3. AAA at first alleged that there was a store in their house at the time of the rape,[21] but later said it was already closed.[22]

Although there are inconsistencies in AAA's testimony, inaccuracies and inconsistencies in the rape victim's testimony are to be expected.[23] This Court finds that these inconsistencies are not material to the instant case. We held, "Rape victims are not expected to make an errorless recollection of the incident, so humiliating and painful that they might in fact be trying to obliterate it from their memory. Thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party."[24]

There is no showing that the trial court's findings were tainted with arbitrariness or oversight; hence, the trial court's finding as to the credibility of the victim is final and binding on this Court.

Furthermore, it bears stressing that testimonies of child victims are given full weight and credit, for youth and immaturity are badges of truth. In *People v. Perez*, the Court aptly held:

> This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter

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[19] TSN, May 23, 2000, p. 6.

[20] TSN, January 15, 2001, p. 12.

[21] *Id.* at 16-18.

[22] TSN, April 17, 2001, p. 15.

[23] *People v. Veluz*, G.R. No. 167755, November 28, 2008, 572 SCRA 500, 518.

[24] *People v. Balbarona*, G.R. No. 146854, April 28, 2004, 428 SCRA 127, 139.

pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true.[25]

Elements of Qualified Rape Duly Proved

The elements of rape as provided in the Revised Penal Code (RPC) are as follows:

ART. 266-A. *Rape, When and How Committed.* – Rape is committed –

1. By a man who **shall 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 is otherwise unconscious;
   - c. By means of fraudulent machination or grave abuse of authority;
   - 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.)

And one of the aggravating circumstances that would qualify the crime and raise the penalty to death is:

ART. 266-B. *Penalties* –

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:

1) When the victim is **under eighteen (18) years of age** and the **offender is a parent**, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim. (Emphasis supplied.)

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[25] *Supra* note 14.

The testimony of the victim-complainant is as follows:

Q: On January 8, 2000 at about 2 o'clock in the afternoon, do you recall where you were?
A: Yes, Sir.

Q: Where were you then at the said date and time?
A: I was at our room, sir.

Q: What were you doing in your room at that time?
A: I was sleeping, sir.

Q: While you were sleeping was there anything unusual that happened?

x x x x x x x x x

A: Yes, sir.

Q: What was that?
A: Ben Rubio removed my shorts and my panty, sir.

Q: What did you do when Ben Rubio removed your shorts and your panty?
A: I pushed him, sir.

Q: How did you know that it was Ben Rubio who removed your shorts and panty when you said you were sleeping at that time?
A: When I woke up he was already in front of me, he was laying [sic] face down, sir.

Q: You said Ben Rubio, if he is inside the courtroom will you be able to identify him?
A: Yes, sir.

Q: Will you point to him?

Interpreter:

The witness pointed to the only accused seated on the first bench of the courtroom wearing yellow t-shirt and *maong* pants, who, when asked, identified himself as Ben Rubio.

Q: You said that when Ben Rubio removed your shorts and panty you pushed him, were you able to push him?
A: No, sir because he was stronger than me.

Q: Was he able to remove your shorts and panty?
A: Yes, sir.

Q: What happened after he was able to remove your shorts and panty?
A: He inserted his penis inside my vagina, sir.

Q: What did you do when he inserted his penis inside your vagina?
A: I resisted, sir.

Q: How did you resist?
A: I moved my body but I was not able to resist because he was stronger than me, sir.

Q: Did you shout?
A: No, sir.

Q: Why?
A: Because if I shout he would hurt me, sir.[26]

The testimony of AAA stated that accused-appellant had carnal knowledge with her, and, thus, being AAA's father, he is presumed to have employed force and/or intimidation. The fear towards her father was more than enough to intimidate her to submit to his lewd advances without shouting for help.[27]

The sole testimony of a rape victim, if credible, suffices to convict.[28] The complainant's testimony—if credible, natural, convincing, and consistent with human nature and the normal course of things—may suffice to support a conviction of rape.[29] This Court finds that the testimony of AAA is straightforward and convincing with no inconsistency with regard to the material elements of the crime of rape.

Furthermore, the aggravating circumstances of minority and relationship were stipulated upon during pre-trial; thus, there is no further need to prove them during trial.

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[26] TSN, May 23, 2000, pp. 3-6.

[27] *People v. Francisco,* G.R. No. 135200, February 7, 2001, 351 SCRA 351, 356.

[28] *People v. Capili,* G.R. No. 142747, March 12, 2002, 379 SCRA 203, 209.

[29] *People v. Nazareno,* G.R. No. 167756, April 9, 2008, 551 SCRA 16, 31.

Accused-appellant seeks to deny the charge against him by stating that the victim did not shout during the alleged bestial act. The Court has declared repeatedly that "[f]ailure to shout or offer tenacious resistance [does] not make voluntary [the victim's] submission to [the perpetrator's] lust. Besides, physical resistance is not an essential element of rape."[30]

Accused-appellant further claims that it is unlikely that rape was committed, because the house where it allegedly occurred only has one room and was then being occupied by three families. This is of no consequence. This Court has reiterated that lust is no respecter of time and place.[31] Rape may even be committed in the same room where other family members also sleep.[32] Besides, it must be noted that the rape occurred in the early afternoon and not in the evening when the rest of the occupants are presumably sleeping in the cramped space.

Medical Findings Corroborate Rape

Accused-appellant also questions the conclusion of the medical examination done by Dr. Reyes. He alleges that since the hymenal lacerations have already healed, then these could not have been due to what AAA claimed, and that even if there were lacerations, it could not be determined if he was the one who caused them.

We are not convinced.

We must bear in mind that "a medical examination of the victim is not indispensable in a prosecution for rape inasmuch as the victim's testimony alone, if credible, is sufficient to convict the accused of the crime. In fact, a doctor's certificate is merely corroborative in character and not an indispensable requirement in proving the commission of rape."[33]

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[30] *People v. Arraz,* G.R. No. 183696, October 24, 2008, 570 SCRA 136, 146.

[31] *People v. Anguac,* G.R. No. 176744, June 5, 2009, 588 SCRA 716, 724; citation omitted.

[32] *People v. Evina,* 453 Phil. 25, 41 (2003); citing *People v. Perez,* G.R. No. 122764, September 24, 1998, 296 SCRA 17.

[33] *People v. Castro,* G.R. No. 172874, December 17, 2008, 574 SCRA 244, 254.

The presence of healed or fresh hymenal laceration is not an element of rape.[34] However, it is the best physical evidence of forcible defloration.[35] Thus, the findings of Dr. Reyes corroborate and support the testimony of AAA.

Proper Penalties

Since all the elements of qualified rape were duly alleged and proved during the trial, the proper penalty should be death according to Article 266-B of the RPC. However, with the effectivity of Republic Act No. 9346, entitled *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, the imposition of the supreme penalty of death has been prohibited. Pursuant to Section 2 of the Act, the penalty to be meted out should be *reclusion perpetua* without eligibility for parole.

The trial court correctly awarded PhP 75,000 as civil indemnity, but the amount of moral and exemplary damages awarded has to be modified consonant to current jurisprudence. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[36] Moral damages are automatically granted in a rape case without need of further proof other than the fact of its commission, for it is assumed that a rape victim has actually suffered moral injuries entitling her to such an award.[37] According to prevailing jurisprudence, the amount of moral damages should be PhP 75,000.[38] Likewise, exemplary damages should have been PhP 30,000, and this is awarded in order to serve as public example and to protect the young from sexual abuse.[39]

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[34] *People v. Espino, Jr.,* G.R. No. 176742, June 17, 2008, 554 SCRA 682, 700.

[35] *People v. Malones,* G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 335.

[36] *People v. Molleda,* G.R. No. 153219, December 1, 2003, 417 SCRA 53, 59.

[37] *People v. Codilan,* G.R. No. 177144, July 23, 2008, 559 SCRA 623, 636.

[38] *People v. Iroy,* G.R. No. 187743, March 3, 2010, 614 SCRA 245, 253.

[39] *Id.*

WHEREFORE, the Decision of the CA in CA-G.R. CR-H.C. No. 03489 is hereby **AFFIRMED**, with **MODIFICATION** in that the award of moral damages is increased to PhP 75,000 and exemplary damages to PhP 30,000. The civil indemnity and damages shall earn interest at six percent (6%) per annum from finality of this Decision until fully paid.[40] Costs against accused-appellant.

SO ORDERED.

Peralta, Abad, Villarama, Jr.,[*] and *Mendoza, JJ.*, concur.

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[40] *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797.

[*] Additional member per Special Order No. 1076 dated September 6, 2011.

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— Circumstances that might demonstrate in a convincing and compelling manner that the debtor could be rehabilitated, enumerated. *(Id.)*

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— Rehabilitation plan is an indispensable requirement in the rehabilitation of a distressed corporation; requisites of a rehabilitation plan, cited. *(Id.)*

COURT PERSONNEL

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Dishonesty — Defined as a disposition to lie, cheat, deceive or defraud; it implies untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle on the part of the individual who failed to exercise fairness and straightforwardness in his or her dealings; unauthorized insertion of an additional sentence in the trial court's order constitutes dishonesty. (Del Rosario *vs*. Pascua, A.M. No. P-11-2999 [formerly OCA IPI No. 10-3517-P], Feb. 27, 2012) p. 1

Violation of office rules and regulations — The employee's failure to secure a travel authority and to state in her leave application her foreign travel constitute violation of office rules and regulations; proper penalty. (Del Rosario *vs*. Pascua, A.M. No. P-11-2999 [formerly OCA IPI No. 10-3517-P], Feb. 27, 2012) p. 1

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Dismissal — Substantial evidence of actual breach is required from an employer to justify employee's dismissal from service based on alleged participation in theft of company property. (Blue Sky Trading Co., Inc. and/or Jose Tantiansu and Linda Tantiansu *vs*. Blas, G.R. No. 190559, March 07, 2012) p. 689

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EXECUTIVE DEPARTMENT

President — Absent grave abuse of discretion, the court should recognize in the President, as Chief Executive, the power and duty to protect and promote public interest thru the rationalization of the compensation and position classification system in executive departments, bureaus, and agencies including government-owned and controlled corporations and government financial institutions. (Galicto *vs*. H.E. President Benigno Simeon C. Aquino III, G.R. No. 193978, Feb. 28, 2012; *Corona, C.J., separate opinion*) p. 141

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PARTIES TO CIVIL ACTIONS

Class suit — The necessary elements for the maintenance of a class suit are: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned. (Juana Complex I Homeowners Asson, Inc. *vs*. Fil-Estate Land, Inc., G.R. No. 152272, March 05, 2012) p. 416

PERJURY

Commission of — Elements; perjury committed through making of a false affidavit or through false testimony under oath in a proceeding; proper venue thereof. (Union Bank of the Phils. *vs*. People of the Phils., G.R. No. 192565, Feb. 28, 2012) p. 108

PLEADINGS

Signature and address requirement — Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box; effect of violation thereof. (Layug *vs*. COMELEC, G.R. No. 192984, Feb. 28, 2012) p. 127

PRELIMINARY INJUNCTION

Writ of — A writ of preliminary injunction is available to prevent a threatened or continuous irremediable injury to parties before their claims can be thoroughly studied and adjudicated; the requisites for its issuance are: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for

— The options available to the taxpayer are mutually exclusive and resort to one bars the application of the other. *(Id.)*

TAXES

Collection of taxes — Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance; it should be made in accordance with law as any arbitrariness will negate the very reason for government itself. (Lascona Land Co., Inc. *vs*. Commissioner of Internal Revenue, G.R. No. 171251, March 05, 2012) p. 430

TECHNICAL MALVERSATION

Commission of — Explained. (Office of the Ombudsman *vs*. Apolonio, G.R. No. 165132, March 07, 2012) p. 553

UNJUST ENRICHMENT

Principle of — Principle of unjust enrichment, explained; failure of the lessor to return the rental fees paid by the lessee during the time that it was denied access to and prevented from using the leased premises constitutes unjust enrichment. (MIAA *vs*. Avia Filipinas International, Inc., G.R. No. 180168, Feb. 27, 2012) p. 34

VENUE

Venue in criminal cases — Venue is an essential element of jurisdiction in criminal cases; it determines not only the place where the criminal action is to be instituted, but also the court that has the jurisdiction to try and hear the case; rationale. (Union Bank of the Phils. *vs*. People of the Phils., G.R. No. 192565, Feb. 28, 2012) p. 108

VENUE AND JURISDICTION

Venue and jurisdiction in criminal cases — Should not only be in the court where the offense was committed but also where any of its essential ingredients took place. (Union Bank of the Phils. *vs*. People of the Phils., G.R. No. 192565, Feb. 28, 2012) p. 108

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