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OF THE

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FROM

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2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 8384. April 11, 2013]

EFIGENIA M. TENOSO, *complainant, vs.* **ATTY. ANSELMO S. ECHANEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE BURDEN OF PROOF IS VESTED UPON THE PARTY WHO ALLEGES THE TRUTH OF HIS CLAIM OR DEFENSE OR ANY FACT IN ISSUE; WHERE THE PARTY RESORTS TO BARE DENIALS AND ALLEGATIONS AND FAILS TO SUBMIT EVIDENCE IN SUPPORT OF HIS DEFENSE, THE DETERMINATION THAT HE COMMITTED THE VIOLATION IS SUSTAINED.— Respondent failed to present evidence to rebut complainant's allegations. Per Section 1, Rule 131 of the Rules of Court, the burden of proof is vested upon the party who alleges the truth of his claim or defense or any fact in issue. Thus, in *Leave Division, Office of Administrative Services, Office of the Court Administrator v. Gutierrez,* where a party resorts to bare denials and allegations and fails to submit evidence in support of his defense, the determination that he committed the violation is sustained. Respondent merely posited that the notarized documents presented by complainant were "tampered and adulterated" or were results of forgery, but he failed to present any proof. Respondent also resorted to a sweeping and unsupported statement that he never notarized any document. Accordingly, the

reasonable conclusion is that respondent repeatedly notarized documents without the requisite notarial commission.

2. LEGAL ETHICS; ATTORNEYS; LAWYERS ARE BOUND TO MAINTAIN NOT ONLY A HIGH STANDARD OF LEGAL PROFICIENCY, BUT ALSO OF MORALITY, HONESTY, INTEGRITY AND FAIR DEALING.— Time and again, this Court emphasizes that the practice of law is imbued with public interest and that "a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation, and takes part in one of the most important functions of the State—the administration of justice—as an officer of the court." Accordingly, "[l]awyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity and fair dealing."

3. ID.; ID.; ID.; A LAWYER WHO MISREPRESENTED HIMSELF AS A NOTARY PUBLIC COMMITS ACTS OF DECEIT AND FALSEHOOD IN OPEN VIOLATION OF THE PRONOUNCEMENTS OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— Similarly, the duties of notaries public are dictated by public policy and impressed with public interest. "[N]otarization is not a routinary, meaningless act, for notarization converts a private document to a public instrument, making it admissible in evidence without the necessity of preliminary proof of its authenticity and due execution." In misrepresenting himself as a notary public, respondent exposed party-litigants, courts, other lawyers and the general public to the perils of ordinary documents posing as public instruments. As noted by the Investigating Commissioner, respondent committed acts of deceit and falsehood in open violation of the explicit pronouncements of the Code of Professional Responsibility. Evidently, respondent's conduct falls miserably short of the high standards of morality, honesty, integrity and fair dealing required from lawyers. It is proper that he be sanctioned.

R E S O L U T I O N

LEONEN, *J.*:

Efigenia M. Tenoso (complainant) filed a complaint against Atty. Anselmo S. Echanez (respondent) alleging that respondent was engaged in practice as a notary public in Cordon, Isabela, without having been properly commissioned by the Regional Trial Court (RTC) of Santiago City, Isabela. This is the RTC exercising jurisdiction over the Municipality of Cordon.

This alleged act violates Rule III of the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). To support her allegations, complainant attached the following documents to her pleadings:

a. Two (2) documents signed and issued by RTC Santiago City Executive Judge Efren M. Cacatian bearing the names of commissioned notaries public within the territorial jurisdiction of the RTC of Santiago City for the years 2006 to 2007 and 2007 to 2008.[1] Respondent's name does not appear on either list;

b. Copies of ten (10) documents that appear to have been notarized by respondent in the years 2006, 2007, and 2008; and

c. A copy of a certification issued by Judge Cacatian stating that a joint-affidavit notarized by respondent in 2008 could not be "authenticated as to respondent's seal and signature as NO Notarial Commission was issued upon him at the time of the document's notarization."[2]

In his two-page Answer, respondent denied the allegations saying, "I have never been notarizing any document or pleadings"[3] and added that he has "never committed any malpractice, nor deceit nor have violated [the] lawyers (sic) oath."[4] He dismissed such allegations as being "preposterous, full of lies, politically

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[1] *Rollo*, p. 59

[2] *Id.* at 59.

[3] *Id.* at 37.

[4] *Id.*

motivated and x x x meant to harass or intimidate [him]."[5] Also, he surmised that the documents annexed to the Affidavit-Complaint were "tampered and adulterated," or that "[s]omebody might have forged [his] signature."[6] He failed to attend the mandatory conference and likewise failed to file his Position Paper.

In his Report and Recommendation dated 29 September 2008, Investigating Commissioner Atty. Salvador B. Hababag recommended that respondent be suspended from the practice of law for six (6) months and disqualified from being commissioned as a notary public for two (2) years for violating Rules 1.01 and 10.01 of the Code of Professional Responsibility.[7]

In a Resolution dated 11 December 2008, the IBP Board of Governors affirmed the findings of the Investigating Commissioner but increased the penalty of suspension from six (6) months to one (1) year. Respondent did not file a Motion for Reconsideration or any other subsequent pleading.

On 12 August 2009, the IBP Board of Governors transmitted its Resolution to the Supreme Court for its action following Rule 139-B of the Rules of Court.[8]

The Court modifies the IBP Board of Governors' Resolution.

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[5] *Id.*

[6] *Id.*

[7] Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.Rule 10.01 - A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

[8] Rule 139-B, Section 12. *Review and decision by the Board of Governors.* -

x x x x x x x x x

b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

Complainant presented evidence supporting her allegation that respondent had notarized various documents in Cordon, Isabela from 2006 to 2008 and that respondent's name does not appear on the list of notaries public commissioned by the RTC of Santiago City, Isabela for the years 2006 to 2007 and 2007 to 2008.

Respondent failed to present evidence to rebut complainant's allegations. Per Section 1, Rule 131 of the Rules of Court,[9] the burden of proof is vested upon the party who alleges the truth of his claim or defense or any fact in issue. Thus, in *Leave Division, Office of Administrative Services, Office of the Court Administrator v. Gutierrez*,[10] where a party resorts to bare denials and allegations and fails to submit evidence in support of his defense, the determination that he committed the violation is sustained. Respondent merely posited that the notarized documents presented by complainant were "tampered and adulterated" or were results of forgery, but he failed to present any proof.[11] Respondent also resorted to a sweeping and unsupported statement that he never notarized any document. Accordingly, the reasonable conclusion is that respondent repeatedly notarized documents without the requisite notarial commission.

Time and again, this Court emphasizes that the practice of law is imbued with public interest and that "a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation, and takes part in one of the most important functions of the State — the administration of justice — as an officer of the court."[12]

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[9] Rule 131, Section 1. *Burden of proof.* — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

[10] A.M. No. P-11-2951, February 15, 2012.

[11] *Supra* note 3.

[12] *In the Matter of the IBP Membership Dues Delinquency of Atty. MARCIAL A. EDILLON (IBP Administrative Case No. MDD-1)*, 174 Phil. 55, 62 (1978).

Accordingly, "[l]awyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity and fair dealing."[13]

Similarly, the duties of notaries public are dictated by public policy and impressed with public interest.[14] "[N]otarization is not a routinary, meaningless act, for notarization converts a private document to a public instrument, making it admissible in evidence without the necessity of preliminary proof of its authenticity and due execution."[15]

In misrepresenting himself as a notary public, respondent exposed party-litigants, courts, other lawyers and the general public to the perils of ordinary documents posing as public instruments. As noted by the Investigating Commissioner, respondent committed acts of deceit and falsehood in open violation of the explicit pronouncements of the Code of Professional Responsibility. Evidently, respondent's conduct falls miserably short of the high standards of morality, honesty, integrity and fair dealing required from lawyers. It is proper that he be sanctioned.

WHEREFORE, We find Atty. Anselmo S. Echanez guilty of engaging in notarial practice without a notarial commission, and accordingly, We **SUSPEND** him from the practice of law for two (2) years and **DISQUALIFY** him from being commissioned as a notary public for two (2) years. He is warned that a repetition of the same or similar act in the future shall merit a more severe sanction.

SO ORDERED.

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

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[13] *Ventura v. Samson*, A.C. No. 9608, November 27, 2012.

[14] *Dela Cruz v. Dimaano*, A.C. No. 7781, September 12, 2008, 565 SCRA 1, 7, *citing Domingo v. Reed*, G.R. No. 157701, December 9, 2005, 477 SCRA 227, 238.

[15] *Id.*

EN BANC

[A.M. No. 09-5-2-SC. April 11, 2013]

IN THE MATTER OF THE BREWING CONTROVERSIES IN THE ELECTIONS OF THE INTEGRATED BAR OF THE PHILIPPINES.

[A.C. No. 8292. April 11, 2013]

ATTYS. MARCIAL M. MAGSINO, MANUEL M. MARAMBA and NASSER MARAHOMSALIC, *complainants, vs.* **ATTYS. ROGELIO A. VINLUAN, ABELARDO C. ESTRADA, BONIFACIO T. BARANDON, JR., EVERGISTO S. ESCALON, and REYMUND JORGE A. MERCADO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; THE SUPREME COURT HAS CONTINUING POWER OF SUPERVISION OVER THE INTEGRATED BAR OF THE PHILIPPINES AND ITS AFFAIRS SUCH AS THE ELECTIONS OF ITS OFFICERS.— There is no dispute that the Constitution has empowered the Supreme Court to promulgate rules concerning "the integrated bar." Pursuant thereto, the Court wields a continuing power of supervision over the IBP and its affairs like the elections of its officers. The current controversy has been precipitated by the petition in intervention of IBP-Southern Luzon, praying that the election of the EVP for the 2011-2013 term be opened to all and that it be considered as qualified to field a candidate for the said position. In the exercise of its continuing supervisory power, the Court is allowing the matter to be raised as an issue because it has not yet been squarely settled x x x. Moreover, it is not only an exercise of its constitutional and statutory mandated duty, but also of its symbolic function of providing guiding principles, precepts and doctrines for the purpose of steering the members of the bench and the bar to the proper path.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE MATTERS; TECHNICAL RULES ARE NOT STRICTLY APPLIED; RULE ON ENTRY OF JUDGMENT NOT APPLICABLE IN ADMINISTRATIVE CASES; THE COURT CAN EXERCISE ITS POWER AND PREROGATIVE TO SUSPEND ITS OWN RULES AND TO EXEMPT A CASE FROM THEIR OPERATION IF AND WHEN JUSTICE REQUIRES IT.— It should be noted that this is merely an *administrative matter, a bar matter* to be specific, where technical rules are not strictly applied. In fact, in administrative cases, *there is no rule regarding entry of judgment*. Where there is no entry of judgment, *finality* and *immutability* do not come into play. On several occasions, the Court has *re-opened administrative cases and modified its decisions that had long attained finality* in the interest of justice. x x x. At any rate, granting that technical rules are strictly applied in administrative matters, the Court can exercise its power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it. "The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final."

3. REMEDIAL LAW; INTEGRATED BAR OF THE PHILIPPINES (IBP) BY-LAWS; ROTATIONAL RULE; THE FIRST ROTATIONAL CYCLE ALREADY COMPLETED DESPITE THE NON-ASSUMPTION TO THE PRESIDENCY OF THE ELECTED IBP GOVERNOR AND EVP; RULING IN VELEZ CASE (528 PHIL. 783), CITED.— [I]n *Velez*, the Court stated that the rotation system applies to the election of the EVP only and considered **the service of then EVP De Vera**, representing the Eastern Mindanao region, as having **completed the first rotational cycle**. For said reason, the Court affirmed the election of Salazar of Bicolandia as EVP. The Court explained that the rotation cycle with respect to the presidency would have been completed with the succession of EVP De Vera as IBP-President. The specific words used in *Velez* were: In Bar Matter 491, it is clear that it is the position of IBP EVP which is actually rotated among the nine Regional Governors. The rotation with respect to the Presidency is merely a result of the automatic succession rule of the IBP EVP to the Presidency. Thus, the rotation rule pertains in particular to the position of IBP-EVP, while the automatic succession rule pertains to the Presidency. The rotation with respect to the Presidency is but

a consequence of the automatic succession rule provided in Section 47 of the IBP By-Laws. In the case at bar, the rotation rule was duly complied with since upon the election of Atty. De Vera as IBP EVP, **each of the nine IBP regions had already produced an EVP** and, thus, **the rotation was completed**. It is only unfortunate that the supervening event of Atty. de Vera's removal as IBP Governor and EVP rendered it impossible for him to assume the IBP Presidency. The fact remains, however, that the rotation rule had been completed despite the non- assumption by Atty. de Vera to the IBP Presidency. The notion that the ruling in *Velez* should not be considered at all by the Court because it is barred by the Omnibus Motion Rule deserves scant consideration. It may have been earlier overlooked, but the Court is not barred from *motu proprio* taking judicial notice of such judicial pronouncement, pursuant to its continuing supervisory powers over the IBP.

4. ID.; ID.; ID.; THE SECOND ROTATIONAL CYCLE ALREADY STARTED WITH THE ELECTION OF THE NEW EXECUTIVE VICE-PRESIDENT (EVP) WHO SUCCEEDED THE REMOVED EVP; POST OF EVP FOR THE 2011-2013 TERM IS OPEN TO ALL QUALIFIED REGIONS.— While there may have been no categorical pronouncement in *Velez* that the second rotational cycle started with the election of Salazar as EVP, it cannot be denied that it was so. With the *Velez* declaration that the election of De Vera as EVP completed the first cycle, there can be no other consequence except that the term of EVP Salazar commenced a new rotational cycle. x x x As there were only four (4) regions which had served as EVP, there are still five (5) regions which have not yet so served. x x x. Needless to state, Western Visayas is not the only region that can vie for EVP for the 2011-2013 term. This answers the query of Fortunato. With respect to IBP-Southern Luzon, following the ruling in *Velez*, it is clear that it already had its turn to serve as EVP in the Second Rotational Cycle.

5. ID.; ID.; ID.; ID.; RULING OF THE COURT IN VELEZ CASE THAT THE SERVICE OF THE EVP REPRESENTING THE EASTERN MINDANAO REGION COMPLETED THE FIRST ROTATIONAL CYCLE, NOT OVERTURNED OR VACATED.— [T]he report of the Special Committee failed to take into account the ruling in [*Velez*] that the service of then EVP Leonard De Vera, representing the Eastern Mindanao region, **completed**

the first rotational cycle. [I]t committed **two inaccuracies**. ***First***, it erroneously reported that "only the governors of the Western Visayas and Eastern Mindanao regions have not yet had their turn as Executive Vice President." ***Second***, it erroneously considered Central Luzon and Bicolandia as having had two terms each in the First Rotational Cycle, when their second services were for the Second Rotational Cycle. The unfortunate fact, however, is that the erroneous statements of the Special Committee were used as bases for the recommendation that "either the governor of the Western Visayas Region, or the governor of the Eastern Mindanao Region should be elected as Executive Vice-President for the 2009-2011 term." Worse, they were cited by IBP-Western Visayas as bases to oppose the Petition in Intervention of IBP-Southern Luzon, arguing that it would be contrary to Section 2, Rule 19, it being filed following the finality of the December 14, 2010 Resolution of the Court. At any rate, the statement of the Court in its December 14, 2010 Resolution that "only the governors of the Western Visayas and Eastern Mindanao regions have not yet had their turn as Executive Vice President," did not pertain to the *lis mota* of the case. Thus, it did not settle anything so as to be deemed a precedent-setting ruling. Those statements, therefore, could not be considered as overturning, vacating and setting aside the ruling in *Velez* that the service of then EV P De Vera **completed the first rotational cycle**.

6. ID.; ID.; ID.; ONE WHO HAS SERVED AS PRESIDENT OF THE IBP MAY NOT RUN FOR ELECTION AS EVP-IBP IN A SUCCEEDING ELECTION UNTIL AFTER THE ROTATION OF THE PRESIDENCY AMONG THE NINE REGIONS SHALL HAVE COMPLETED WHEREUPON THE ROTATION SHALL BEGIN ANEW.— As *Velez* declared that the election of EVP De Vera completed the first rotational cycle, it could only mean that all regions had their respective turns in the first rotational cycle. Thus, in this second rotational cycle, issues as to the nature of his election and service as IBP-President during the First Rotational Cycle are inconsequential. At any rate, Eugene Tan could not be considered as an interim president. It was Justice Felix Antonio who was designated by the Court as Interim Caretaker until the election of the IBP-President by the elected IBP- BOG. The election of the new President and Executive Vice-President was directed by the Court itself and in no way can it be said that they served on an interim basis. Besides, at that

time, under Section 47, the rotation concerned the presidency only. Section 47 was ordered to be amended only in the December 14, 2010 Resolution, despite *Bar Matter No. 491* and Velez, which recognized the operational fact that the rotation was from the position of President to that of EVP. If Eugene Tan served only up to April, 1991, it was not because he served merely in the interim. He served up to that time only because he **resigned**. x x x. Moreover, in *A.M. No. 491*, the Court stressed that: "One who has served as President of the IBP may not run for election as EVP-IBP in a succeeding election until after the rotation of the presidency among the nine (9) regions shall have completed; whereupon the rotation shall begin anew."

7. ID.; ID.; ID.; ROTATION BY EXCLUSION; ROTATION RULE SHOULD BE APPLIED IN HARMONY WITH, AND NOT IN DEROGATION OF, THE SOVEREIGN WILL OF THE ELECTORATE AS EXPRESSED THROUGH THE BALLOT.— As clarified in the December 4, 2012 Resolution of the Court, the rotation should be by exclusion. x x x. As noted by the Court in its December 4, 2012 Resolution, there is a sense of predictability in the rotation by the pre-ordained scheme. Through the rotation by exclusion scheme, the elections will be more genuine, as the opportunity to serve at any time is once again open to all, unless, of course, a region has already served in the new cycle. While predictability is not altogether avoided, as in the case where only one region remains in the cycle, still, as previously noted by the Court "the rotation rule should be applied in harmony with, and not in derogation of, the sovereign will of the electorate as expressed through the ballot."

8. ID.; ID.; ID.; THE DECEMBER 14, 2012 RESOLUTION OF THE COURT DID NOT OVERTURN THE RULING IN VELEZ BUT MERELY DIRECTED THE ELECTION OF THE NEXT EVP, WITHOUT ANY REFERENCE TO ANY ROTATIONAL CYCLE.— That the Court, in its December 14, 2010 Resolution, ordered the election of the EVP-IBP for the next term based on the inaccurate report of the Special Committee, is a fact. That cannot be erased. As a consequence thereof, Libarios of IBP-Eastern Mindanao is now the IBP President. He, however, is part of the **second rotational cycle** because **1]** in *Velez* it was categorically ruled that the service of then EVP De Vera, representing the Eastern Mindanao region, **completed the first**

rotational cycle; and **2]** he could not be part of the first rotational cycle because EVP de Vera of the same region had already been elected as such. It is to be noted that in the December 14, 2010 Resolution, the Court did not categorically overturn the ruling in *Velez*. It merely directed the election of the next EVP, without any reference to any rotational cycle. To declare that the first rotational cycle as not yet completed will cause more confusion than solution. In fact, it has spawned this current controversy. To consider the service of current president, Libarios, as part of the first rotational cycle would completely ignore the ruling in *Velez*.

9. ID.; ID.; ID.; SECTIONS 47 AND 49 OF THE IBP BY-LAWS SHOULD BE FURTHER AMENDED, TO INCLUDE THEREIN THE RESTORATION OF THE AUTOMATIC SUCCESSION OF THE EVP TO THE POSITION OF THE PRESIDENT.— Whatever the decision of the Court may be, to prevent future wranglings and guide the IBP in their future course of action, Section 47 and Section 49 of the IBP By-laws should again be amended. Stress should be placed on the automatic succession of the EVP to the position of the president. Surprisingly, the automatic succession does not appear in present Section 47, as ordered amended by the Court in the December 14, 2010 Resolution. It should be restored.

10. ID.; ID.; ID.; CREATION OF A PERMANENT COMMITTEE FOR IBP AFFAIRS, RECOMMENDED.— To further avoid conflicting and confusing rulings in the various IBP cases like what happened to this one, the December 14, 20l0 Resolution and *Velez*, it is recommended that the Court create a committee for IBP affairs to primarily attend to the problems and needs of a very important professional body and to make recommendation for its improvement and strengthening.

BRION*, J., separate concurring opinion:*

1. REMEDIAL LAW; INTEGRATED BAR OF THE PHILIPPINES (IBP) BY-LAWS; THE CHOICE OF EXECUTIVE VICE PRESIDENT (EVP) WHO WILL SERVE WITH THE PRESIDENCY OF EASTERN MINDANAO IN THE 2011-2013 SHOULD BE OPEN TO ALL REGIONS, EXCEPT ONLY FOR EASTERN MINDANAO WHICH CANNOT SERVE AS PRESIDENT FOR TWO (2) CONSECUTIVE TERMS.— To ***start the next cycle of rotation*** from the **prism this time of the EVP**

position and to do this prospectively, the rotation must start from the 2011-2013 term – the term immediately following the December 14, 2010 amendment, whose EVP still needs to be elected. Automatic succession to the Presidency will likewise start but this will have to actually take place in the 2013-2015 term as succession speaks of a future event reckoned from the effectivity of the EVP rotation in 2011-2013. **Thus, the choice of EVP who would serve with President Libarios in the 2011-2013 term should be open to all regions, except only for Eastern Mindanao which cannot serve as President for two (2) consecutive terms.** This is the unique opportunity that is open to the Court as the present 2011-2013 EVP position is vacant. Notably, no region would be prejudiced as all regions have at this point served their respective turns in the Presidency. To sum up x x x, the completion of one rotation through the "turn" of the 9th region to the Presidency, and the start of a new system of rotation through the EVP rotation, mean that: *The 2011-2013 Presidency of President Libarios will end the rotation of Presidency as decreed under Bar Matter No. 491.* ***The 2011–2013 term will signal and count as the start of the new rule on strict rotation of the EVP position; this will be the first turn in the EVP rotation.*** Elections can be held without need of any special transitory measures as the ***post of EVP for the 2011-2013 term remains vacant***. ***The 2011–2013 EVP should be chosen at large among the remaining eight regions*** *(i.e., excluding the region of the 9th President since this will be the first turn for the EVP position and since the Presidency should not come in succession from the same region).* ***The 2011–2013 EVP will automatically succeed to the position of President for the 2013–2015 term (effectively the start of a new turn from the prism of the Presidency); the Court though still needs to put an automatic succession provision in place after its deletion under the December 14, 2010 amendment.*** This conclusion is fully in accord with the conclusion of Justice Jose Catral Mendoza, based on his parallel reasoning on the matter. [T]his is the most **sound, fair, reasonable and practical** conclusion under the circumstances. To reiterate, it is fully **in accord with and fully respects the rotation and succession systems** that Bar Matter No. 491 dictated, while at the same time **seamlessly blending the old rule with the new terms of Section 47**, **Article VII of the IBP By-Laws, as amended**. Most importantly, this option essentially fosters a **fair** result as it

has respected the right of all IBP regions to serve the EVP and the Presidency, and at the same time gives the IBP a **fresh start** at another round of rotation with clearer terms. More than all these, by its insistence on the rule of rotation and that all regions should serve their "turns," it signals **the Court's strong commitment to the rotational rule**.

2. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; THE SUPREME COURT'S EXERCISE OF SUPERVISION OVER THE IBP IS A CONTINUING REGULATORY PROCESS AND THE RULINGS ISSUED UNDER THIS POWER DO NOT INVOLVE STRICTLY JUDICIAL MATTERS THAT BECOME FINAL AND IMMUTABLE UNDER STRICT ADJUDICATION RULES BUT ARE OPEN FOR REVIEW BY THE COURT.— Section 5, Article VIII of the Constitution mandates the Court's power of supervision over the IBP. This is the same power that the Court exercised in the issuance of the rules on the *Writ of Amparo*, the rules on the *Writ of Kalikasan*, and the Rules of Court, among others. In *Garcia v. De Vera*, the Court held that that implicit in the constitutional grant to the Supreme Court of the power to promulgate rules affecting the IBP (under Section 5, Article VIII of the Constitution) **is the power to supervise all the activities of the IBP, including the election of its officers.** x x x. Pursuant to this supervisory power, the Court created a Special Investigating Committee to look into the "brewing controversies in the IBP elections, specifically in the elections of Vice President for the Greater Manila Region and Executive Vice President of the IBP itself and any other election controversy involving other chapters of the IBP, if any, including the election of the Governors for Western Mindanao and Western Visayas." x x x. On the basis of the findings of the Special Investigating Committee, the Court resolved the various controversies relating to the elections in the various chapters of the IBP; declared EVP Vinluan unfit to hold his position and unqualified to assume the office of IBP President for the 2009-2011 term; designated retired Supreme Court Justice Santiago Kapunan as Officer-in-Charge of the IBP, and decreed the amendment of Sections 31, 33, par. (g), 39, 42 and 43, Article VI and Section 47, Article VII of the IBP By- Laws. All these rulings and directives rested on the Court's supervisory authority and were made in the exercise of the Court's ***administrative*** rather than its judicial or adjudicatory functions,

and were made in the exercise of its ***power of supervision, not on the basis of the power of judicial review.*** The Dissent apparently did not consider that in the exercise of these supervisory powers, the Court's issuances **did not involve strictly judicial matters that become final and immutable under strict adjudication rules.** In blunter terms, the Court's exercise of supervision is a continuing regulatory process; the rulings issued under this power are not cast in stone x x x; these rulings remain open for review by the Court in light of prevailing circumstances as they develop. An example of this ongoing regulatory supervision by the Court over the IBP is **Section 77 of the IBP-By Laws, which gives the Court the power to amend, modify or repeal the IBP By-laws, either *motu proprio* or upon the recommendation of the Board of Governors,** as the Court did in fact, in Bar Matter No. 491 and subsequently in its December 14, 2010 Resolution when it ordered the amendment of Sections 31, 33, par. (g), 39, 42 and 43, Article VI and Section 47, Article VII of the IBP By-Laws.

3. ID.; ID.; ID.; THE COURT'S POWER OF SUPERVISION OVER THE IBP, EXPOUNDED; THE COURT MAY CHANGE, SUSPEND OR REPEAL THE DIRECTIVES OR POLICIES IT DECREED OR ADOPTED IF IT FINDS THEIR APPLICATION TO BE CONTRARY TO LAW OR PUBLIC POLICY OR INAPPROPRIATE UNDER PREVAILING CIRCUMSTANCES.— The dynamic character of the Court's power of supervision over the IBP is also evident from the manner the Court treats administrative matters brought before it. An administrative matter (such as the one filed before the Court in A.M. No. 09-5-2-SC and A .C. No. 8292, subject matter of the December 14, 2010 Resolution) that is entered in the Court's docket is either an administrative case (A .C.) or an administrative matter (A.M.) submitted to the Court for its consideration and action pursuant to its power of supervision. An **administrative case (A.C.)** involves disciplinary and other actions over members of the Bar, based on the Court's supervision over them arising from the Supreme Court's authority to promulgate rules relating to the admission to the practice of law and its authority over the Integrated Bar. Closely related to A.C. cases are the **Bar Matter (*B.M.*)** cases particularly those involving admission to the practice of law. An **administrative matter (A.M.)** is a matter based on the Supreme Court's power of supervision: under Section 6, Article VIII of the Constitution

(the Court's administrative supervision over all courts and the personnel thereof); under Section 8 (supervision over the JBC); and under Section 5(5) (supervision over the IBP). In administrative matters concerning the IBP, the Court can supervise the IBP by ensuring the legality and correctness of the exercise of its powers as to means and manner, and by interpreting for it the constitutional provisions, laws and regulations affecting the means and manner of the exercise of its powers. The Court, of course, is the final arbiter in the interpretation of all these instruments. For this precise reason, the IBP By- laws reiterates that the Court has the plenary power to amend, modify or repeal the IBP By-laws in accordance with policies it deems, not only consistent with the Constitution, laws and regulations, but also as may be necessary, practicable and appropriate in light of prevailing circumstances. It is in this sense that ***no entry of judgment is made*** with respect to administrative matters brought before the Court because special circumstances may affect or radically change the directives or policies the Court may decree or adopt. In concrete terms, the Court may change, suspend or repeal these directives or policies if its finds their application to be contrary to law or public policy or inappropriate under the prevailing circumstances. x x x. [T]he Court's issuances on administrative matters pursuant to its exercise of its regulatory supervision over the IBP does not become final and immutable as in ordinary adjudicated cases; it is always subject to continuing review by the Court, guided by the dictates of the Constitution, laws and regulations, as well as by policies the Court deem necessary, practicable, wise, and appropriate in light of prevailing circumstances.

4. ID.; RULES OF PROCEDURE; RULES ON INTERVENTION IN THE RULES OF COURT ARE NOT STRICTLY APPLIED IN ADMINISTRATIVE PROCEEDINGS; RULES OF PROCEDURE ARE ONLY USED TO HELP SECURE, NOT OVERRIDE SUBSTANTIAL JUSTICE.— If judgment does not really become final in the sense understood in the adjudicatory sense, then the admission of an intervention should always be subject to the Court's wise exercise of discretion. There, too, is the well-settled rule that the Dissent conveniently failed to mention: technical rules of procedure (*i.e*. the rules on Intervention in the Rules of Court) are not strictly applied in administrative proceedings such as the present case. In *Office of the Court of Administrator v. Canque,* we pointedly stated: **Technical**

rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process cannot be fully equated with due process in its strict judicial sense. A formal or trial-type hearing is not required. x x x. Beyond the rule on stability of our jurisprudence and procedural technicalities, the Dissent should appreciate the relationship of the Court to the IBP and the role that the Constitution has assigned to the Court, all of which have been mentioned and discussed elsewhere in this Separate Concurring Opinion. Likewise, it should have considered the importance of the administrative matter before us - issues that may determine future elections of the IBP. In these lights, insistence on the use of strict procedural rules cannot but be regarded as resort to petty arguments that only waste the time and attention of this Court. To use our usual phraseology on these kinds of arguments, rules of procedure should not be applied in a very rigid, technical sense; they are only used to help secure, not override, substantial justice. Note that we have made these rulings *even in the exercise of our adjudicative power* where stricter rules apply.

5. ID.; ESTOPPEL BY LACHES; EXPLAINED; DOCTRINE CANNOT BE APPLIED TO IBP-SOUTHERN LUZON.— The Dissent's invocation of the doctrine of estoppel by laches on the part of IBP-Southern Luzon and Governor Joyas is erroneous. Laches has been defined as the failure or neglect for an *unreasonable and unexplained* length time to do that which, by exercising due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it. Significantly, laches is not concerned with mere lapse of time; the fact of delay, standing alone, is insufficient to constitute laches. In *Chavez v. Perez*, we emphasized that the hallmark of the application of laches is a question of inequity or unfairness in permitting a right or claim to be enforced or asserted, thus: The doctrine of laches is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims, and is **principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.** There is no absolute rule as to what constitutes laches; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court, and since it is an equitable doctrine, its application is

controlled by equitable considerations. It cannot be worked to defeat justice or to perpetrate fraud and injustice. In the present case, the Dissent failed to cite any instance of unfairness or inequity in allowing the alleged belated intervention of IBP-Southern Luzon and Governor Joyas. At any rate, as mentioned above, the Court's issuances, on administrative matters pursuant to its exercise of its regulatory supervision over the IBP (such as the Court's December 14, 2010 Resolution) do not become final and immutable as in ordinary adjudicatory cases; they are always subject to continuing review by the Court. In filing the petition for intervention, IBP-Southern Luzon and Governor Joyas are merely asking for proper guidance from the Court pertaining to the issues involved with the IBP elections for EVP for the 2011-2013 term by invoking the Court's regulatory supervision over the IBP.

6. ID.; INTERVENTION; THE AIM OF THE RULE ON INTERVENTION IS TO FACILITATE A COMPREHENSIVE ADJUDICATION OF RIVAL CLAIMS OVERRIDING TECHNICALITIES ON THE TIMELINESS OF THE FILING THEREOF; IBP-SOUTHERN LUZON HAS A DIRECT AND IMMEDIATE INTEREST IN THE PROPER IMPLEMENTATION OF THE ROTATIONAL RULE WITH RESPECT TO THE POSITION OF EVP FOR THE 2011-2013 TERM.— [IBP-Southern Luzon and Governor Joyas] have (as all the other eight regions of the IBP) a direct and immediate interest in the proper implementation of the rotational rule with respect to the position of EVP for the 2011-2013 term, in the same manner that this Court and all its Members have similar interests on the matter. In fact, this Court's ruling on the proper implementation of the rotational rule for the EVP for the 2011-2013 term will directly and immediately impact on IBP-Southern Luzon which will either gain or lose the opportunity for direct and meaningful participation in IBP affairs as a result of the direct legal operation and effect of the Court's determination in the present case. Section 47 of the IBP By-laws, as amended, guarantees this legal interest when it provides that "[t]he Executive Vice President shall be elected on a strict rotation basis by the Board of Governors from among themselves, by the vote of at least five (5) Governors. At any rate, the Court, has recognized exceptions to Section Rule 19, in the interest of substantial justice, as reflected in the following ruling: The rule on

intervention, like all other rules of procedure, is intended to make the powers of the Court fully and completely available for justice. It is aimed to facilitate a comprehensive adjudication of rival claims overriding technicalities on the timeliness of the filing thereof.

7. ID.; INTEGRATED BAR OF THE PHILIPPINES (IBP) BY-LAWS; PRIOR TO THE 2010 AMENDMENT OF SECTION 47, ARTICLE VII OF THE IBP BY-LAWS, THE EVP POST WAS A SUBSIDIARY CONSIDERATION THAT MUST BOW TO THE PRIMACY OF THE ROTATION OF THE PRESIDENCY; ALL REGIONS OTHER THAN CENTRAL LUZON, SOUTHERN LUZON, AND EASTERN MINDANAO CAN COMPETE FOR THE EVP POST FOR 2011-2013 TERM.— [T]he previous version of Section 47, Article VII of the IBP By-laws expressly required that the Presidency shall rotate among the nine (9) regions. The Dissent's view that a completed turn strictly requires election as EVP for the current term (two years of service as EVP) and then service as President for the next term (plus another two years as IBP President), is not supported by the plain import of the wordings of previous version of Section 47, Article VII of the IBP By-Laws that merely required that all the nine (9) regions, through their respective Governors, shall at some time during the rotation take their turn as IBP President. Under this system, it is the Presidency that must be counted, considered and assured and the election or effective rotation of the EVP is only a part of ensuring the rotation of the Presidency because the two positions are inextricably linked by the element of succession. In this sense, any rotation in the EVP post under the previous Section 47 was a subsidiary consideration that must bow to the primacy of the rotation of the Presidency. x x x. As x x x discussed, the first region to avail of its turn in Bar Matter No. 491 was IBP-Western Visayas with the election of Atty. Tan as President and Atty. Tanopo of Central Luzon as EVP. This was the very first election under Bar Matter No. 941 and the import of this amendment would be trivialized if the first election conducted under it would not fall under its rule. To be sure, Bar Matter No. 941 never stated, expressly or impliedly, that this first election was to be an interim measure; it simply decreed that there shall be presidential rotation and called for an election. From this perspective, *Velez* could not be wrong in counting the election of Atty. Tan as

President as the first turn in the presidential rotational cycle, even if President Tan did not go through any prior election as EVP. x x x. Thus, x x x the Court effectively opened a new round of rotation for the EVP position, to start after the 2003-2005 term. The new rotation cycle for EVPs, preparatory to the presidential rotation that Bar Matter No. 941 expressly required, started with the 2005-2007 election of Atty. Bautista of Central Luzon as EVP. From the *Velez* view, the presidential rotation that Bar Matter No. 491 required came to pass as the first turn in 2nd rotational cycle when Atty. Bautista succeeded to the IBP Presidency in 2007-2009 term. In sum, following *Velez* to its logical consequence and observing the principle of exclusion, all regions other than Central Luzon, Southern Luzon and Eastern Mindanao can compete for the EVP post for the 2011-2013 term.

8. ID.; ID.; THE DECEMBER 14, 2010 RESOLUTION OF THE SUPREME COURT DID NOT OVERTURN THE VELEZ RULING (528 PHIL. 783); THE NEW RULE ON ROTATION MUST BE APPLIED AND IMPLEMENTED WITHOUT ANY RESERVATIONS OR QUALIFICATIONS.— [T]here never was any statement in the December 14, 2010 ruling that the *Velez* ruling is incorrect. Even if there had been, this Court – at this point – is not powerless to correct whatever misimpressions there might have been because of the confusing rulings heretofore issued. It is to be noted that, the December 14, 2010 ruling itself has its imperfections that deepened the deviations from the rotation system instead of setting the system aright. For one, it completely failed to take into account the Court's ruling in *Velez*. Also, the Court erroneously adopted the Special Committee's incomplete computation of the presidential rotational cycle. Instead of counting the cycle from the Presidency of Atty. Eugene Tan of Western Visayas in the 1989-1991 term as Bar Matter No. 491 dictated, the Court counted the rotation from the Central Luzon Presidency in the 1991-1993 term. This mistaken premise led the Court to conclude that only the Governors of the Western Visayas and Eastern Mindanao regions had not yet had their turn as EVP so that the choice of EVP for the 2009- 2011 term should be solely confined to them. The continued wranglings about the Court's past rulings – as exemplified by the Dissent's own objections – constitute the very reason why a clean slate, justified by a reasonably

sensible reading of the By-laws, should now be made, to free up the IBP from any and all seeds of confusion that may linger. ***In other words, rather than continue to find fault with past rulings and with one another, let this Court now accept that a new rule on rotation is upon us, and start to apply and implement this new rule without any reservations or qualifications arising from past rulings this Court made. This is the wisest, most reasonable and most practical ruling we can make under the present circumstances.***

9. ID.; ID.; THE COURT'S RECONSIDERATION AND CORRECTION OF THE ERRONEOUS DECEMBER 14, 2010 RESOLUTION DOES NOT AMOUNT TO FLIP-FLOPPING BUT PERTAINS TO THE COURT'S CONTINUING REGULATORY SUPERVISION OVER THE IBP; FOR AS ALONG AS THE COURT DOES NOT FLIP-FLOP ON THE SAME CASE, THUS CONFUSING NOT ONLY THE PUBLIC BUT THE SAME PARTIES WHO HAVE PREVIOUSLY APPLIED ITS RULINGS AND DECISIONS, THE COURT SHOULD NOT HESITATE TO BACKTRACK AND CORRECT ITS ACTIONS IN THE PAST, PARTICULARLY, IF THEIR NEW DIRECTIONS BETTER SERVE THE OBJECTIVES AND PURPOSES OF THE LAWS WE INTERPRET AND THE GREATER PUBLIC GOOD.— [T]he Court's issuances pertaining to its regulatory supervision over the IBP does not become final and immutable as ordinary cases, as it is always subject to continuing review by the Court. This notion debunks entirely the Dissent's charge of flip-flopping should the Court reconsider its December 14, 2010 Resolution. In light of the role, participation, powers and duties that the Court and its Members hold with respect to the IBP, the worst move that this Court can make at this point is to be irretrievably wedded to decisions and rulings the Court has rendered in the past. Rather, as the Supreme Tribunal in the land with specific powers duties and powers imposed no less than the Constitution, it should now act wisely, with foresight and with due regard to the lessons of the past; it should seek to restore rational consistency in the future rulings affecting the IBP. In fact, the Court should itself strive not to be a part of the problem; it cannot but be in the IBP's stage as a participant in a constitutionally-designed play, but it must act more as a actor/director keenly keeping a close and critical eye on the events and ready to lead, guide and act with measured firmness if and when the play gets out of hand. The essence of judicial and

jurisprudential life is growth and greater understanding of our efforts and their results, particularly for our constituencies and the laws we interpret. For as long as we do not flip-flop on the same case, thus confusing not only the public but the same parties who have previously applied our rulings and decisions, we should not hesitate to backtrack and correct our actions in the past, particularly, if our new directions better serve the objectives and purposes of the laws we interpret and the greater public good. After all, one of the Court's own venerated doctrine - *stare decisis et non quieta movere* - itself recognizes that rulings are "not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside."

10. ID.; ID.; CREATION OF A PERMANENT IBP COMMITTEE IN THE SUPREME COURT TO HANDLE THE AFFAIRS OF THE IBP, PROPOSED.— Consistent with the x x x principles and as a **pro-active response** that the Court can offer the IBP and the public who depend on lawyers for their legal needs, the Court must now recognize the continuing need for study and consultations with the IBP on what is best for the organization. The Court cannot undertake its constitutional duties alone. The IBP — itself of which the Members of this Court are themselves a member — should always actively be consulted as the party directly and immediately affected by the rulings and actions of the Court. **Towards this end, [the ponente proposes] the creation of a new and continuing IBP Committee in the Court to generally handle the lBP's affairs; to study and suggest recommendations; to take the lead and initiative in efforts concerning the IBP; and to troubleshoot whatever problems may occur, instead of creating a special committee whenever IBP-related problems arise.**

VELASCO, JR., *J., dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; ABSENT LEGAL INTEREST IN THE SUBJECT MATTER OF THE LITIGATION, AN INTERVENTION HAS NO LEG TO STAND ON AND IS DEVOID OF MERIT; THE COURT IS PRECLUDED FROM ENTERTAINING THE PETITION-IN-

INTERVENTION OF IBP-SOUTHERN LUZON REGION (IBP-SLR) FOR IT IS NOT QUALIFIED TO FIELD A CANDIDATE FOR IBP-EVP FOR THE 2011-2013 TERM.—. Neither IBP-SLR nor Governor Joyas has LEGAL INTEREST IN THE SUBJECT MATTER OF THE LITIGATION, OR IN THE SUCCESS OF EITHER OF THE PARTIES as required under Sec. 1, Rule 19 of the Rules of Court x x x. IBP-SLR is not qualified to field a candidate for IBP-EVP for the term 2011-2013 because the BOG had already elected Atty. Raul Angangco of that region as IBP-EVP for the term l993-l995 and, in addition, had also elected a 2nd IBP-EVP in the person of Atty. Vinluan for the term 2009 to 2011. Clearly, the IBP-SLR had already two (2) elected EVPs, thus precluding the election of movant as the 3rd EVP in this present rotation. Considering that **IBP-SLR can *no longer field a candidate*** for the position of IBP-EVP and ***not qualified* to field a candidate for IBP-EVP** for the 2011-2013 term, **IBP-SLR and Governor Joyas have *NO legal interest*** in the matter subject of the assailed December 14, 20l0 Resolution. Ergo, the proposed intervention has no leg to stand on and is patently devoid of merit.

2. ID.; ESTOPPEL; A PARTY IS ESTOPPED FROM QUESTIONING AN ALREADY FINAL AND PARTIALLY EXECUTED RESOLUTION OF THE COURT; IBP-SLR IS ESTOPPED FROM QUESTIONING THE DECEMBER 14, 2010 RESOLUTION OF THE COURT FOR UNJUSTIFIED INACTION FOR A CONSIDERABLE PERIOD OF TIME.— The intervention of IBP-SLR was filed ***only*** on July 27, 2012 or MORE THAN A YEAR after Governor Joyas assumed the position of Governor for Southern Luzon on July l, 2011 and *over one (1) year and five (5) months after the judgment of a case* in which intervention is sought has become final and executory. In view thereof, **Governor Joyas is considered estopped** from questioning the already final and partially executed December 14, 2010 Resolution. As it were, Governor Joyas waited for more than ONE (1) FULL YEAR after assuming the position of SLR Governor before attempting to reopen the already final resolution of the Court. It cannot be denied that Governor Joyas was fully aware of the December 14, 2010 Resolution of this Court. Yet, without presenting any justifiable explanation, he did not lift a finger to question the same when he became Governor for Southern Luzon. Based on this factual setting, it is clear that *there is already waiver on his part and the part of IBP-SLR*

to question the final and executory December 14, 2010 Resolution. Also, just like the movants in the aforementioned case of *Chavez,* the IBP-SLR and Governor Joyas *have not offered any explanation for their belated intervention* considering that the December 14, 2010 Resolution and the proceedings leading up to the same were controversial, publicized and known to the movant. Indeed, they could not "feign unawareness" of the said resolution. Worse, the IBP-SLR had every opportunity to intervene before the finality of the December 14, 2010 Resolution but it chose to do so at this very late stage when the proposed intervention can only serve to delay the execution of the Resolution. Hence, because of their unjustified inaction for a considerable period of time, both the IBP-SLR and Governor Joyas are ESTOPPED from questioning said Resolution.

3. ID.; RULES OF PROCEDURE; NO JUSTIFICATION TO RELAX THE PROCEDURAL RULES ON INTERVENTION IN CASE AT BAR; CASE OF *PINLAC V. COURT OF APPEALS* AND OTHER CASES CITED IN THE PETITION ARE NOT PRECEDENTS TO THE PETITION AT BAR.— The *ponencia* cites *Pinlac* as justification for the Court to relax the procedural rules on intervention. However, it must be pointed out that *Pinlac* is not applicable to and, hence, cannot serve as precedent to the case at bar. In *Pinlac,* the Republic of the Philippines, as intervenor, undoubtedly had legal interest in a five (5)-hectare lot in Quezon City covered by OCT No. 333 where several government buildings, offices and complexes are situated, such as the House of Representatives and the Sandiganbayan, among others. On the other hand, *IBP-SLR and Governor Joyas have no interest in the matter in litigation,* as admitted by Justice Mendoza in the first and second draft *ponencias* where he found that IBP-SLR already had two (2) EVPs (Angangco and Vinluan) and in the third draft *ponencia* where it was concluded that IBP-SLR already had its turn in choosing the EVP and, hence, is not qualified for the second rotation. Neither does *Mago v. Court of Appeals* apply to the case at bar. x x x. The intervention was allowed as the Court found the intervenors therein as *indispensable parties with such substantial interest in the controversy or subject matter* that a final adjudication cannot be made in their absence without affecting, nay injuring, such interest. The application of rules was relaxed to disregard the

tardy filing of the petition by nine (9) days to serve the ends of equity and justice based on substance and merit. This, however, cannot be said of IBP-SLR and Gov. Joyas because, as erstwhile stated, IBP-SLR is already precluded from fielding a candidate for the position of the EVP pursuant to the rotation by exclusion rule. In addition, the judgment of the RTC in *Mago* has not yet been executed when it was questioned by Mago, *et al*. unlike the December 14, 2010 Resolution in the instant case. The cited ***Director of Lands v. Court of Appeals*** **is also inapplicable** because, unlike IBP-SLR and Governor Joyas, the intervenors therein had substantial interest in the matter in litigation and, unlike the present case, there was no final and partially executed decision. x x x. In the instant case, however, there appears to be *no higher or greater public interest* which will be served in granting IBP-SLR's intervention. Thus, reliance on the case of *Director of Lands* is misplaced. Similarly, ***Tahanan Development Corp. v. Court of Appeals*** **(*Tahanan*) is not a precedent** to the case at bar. Like *Director of Lands,* the intervenors in *Tahanan* had legal interest in the matter in litigation and interposed their plea for intervention *before the execution* of the decision.

4. ID.; JUDGMENTS; FINAL AND EXECUTORY; INTERVENTION BY A PERSON WHO HAS NOT SHOWN ANY LEGAL INTEREST IN THE MATTER IN LITIGATION AFTER THE DECISION HAS BECOME FINAL AND EXECUTORY IS NOT ALLOWED; THE DECEMBER 14, 2010 RESOLUTION OF THE COURT IS ALREADY FINAL AND EXECUTORY; HENCE, IMMUTABLE AND UNALTERABLE AND IS NO LONGER OPEN TO AMENDMENT.— The December 14, 2010 Resolution has become FINAL AND EXECUTORY after the Court denied with finality the Motion for Reconsideration of Atty. Elpidio G. Soriano III on February 8, 2011. Thus, the said Resolution has become IMMUTABLE AND UNALTERABLE and is no longer open to any amendment. Once a judgment becomes final, it may not be modified in any respect even if the modification is meant to correct what is perceived to be erroneous conclusions of law and fact. In *Chavez v. PCGG*, the Court expressly ruled that the intervention sought by the movants can no longer be allowed after its judgment has become final x x x. Verily, *there is NO jurisprudence allowing an intervention by a person who has not shown any*

legal interest in the matter in litigation after the decision has become final and executory. Section 2, Rule 19 is explicit that no intervention is allowed after the judgment has become final. **Once finality sets in, what remains to be done is the purely ministerial enforcement and execution of the judgment.** The former practice under Section 2, Rule 12 was to allow intervention "before or during trial." Subsequently, the Court liberalized the rule even further by allowing intervention before judgment is rendered which is now captured in Section 2, Rule l9 of the Rules of Court. The rationale behind the revised rule is clear – before a decision is rendered, the Court may still allow the introduction of additional evidence by applying the liberal interpretation of the period for trial which may be akin to reopening of trial. Since judgment has not yet been rendered, the issues and subject matter of the intervention may still be resolved and incorporated in the decision; thus, the court is able to dispose of all the issues in the case. However, *after judgment has been rendered,* the court will no longer have the opportunity to conduct a total and exhaustive reassessment of all the issues in the case and the reopening of the case will greatly delay its adjudication. Needless to say, the resurrection of the case will be strictly considered *against* the proposed intervention after the decision is rendered and has become final. x x x. [I]n the instant case, there is no more pending principal action wherein IBP-SLR may intervene since the Court already rendered a judgment which has since become final and executory. And in this case, it is significant to note that the **December 14, 2010 Resolution has already been *PARTIALLY EXECUTED*** when Atty. Libarios of IBP-Eastern Mindanao was elected as IBP president and, hence, the only remaining ministerial act to be performed is the election of an IBP-EVP from the IBP- WVR for the term 2011 to 2013. **Since the instant case is already in the execution stage, then there is no rhyme or reason why an intervention at this late stage will still be allowed.**

5. ID.; ID.; ID.; DOCTRINE OF IMMUTABILITY OF JUDGMENTS; EXPOUNDED.— Through their proposed intervention, IBP-SLR would like the Court to scuttle IBP-WVR's entitlement to field a candidate for IBP-EVP for the 2011-2013 term for the reason that the Special Committee erred when it failed to consider the election of Tan as temporary or interim IBP-president in l990. It may be conceded, for argument, that an error was

committed by the Special Committee, but such error, if that be the case, was peremptorily adopted by the Court in its own final December 14, 20l0 Resolution. It is a fundamental legal principle that a final decision is immutable and unalterable, and may no longer be modified in any respect, whether it be made by the court that rendered it or by the highest court of the land. Litigation must at some time end. Even at the risk of occasional errors, public policy dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets to naught the role and purpose of the courts to resolve justiciable controversies with finality. As explained in *Aliviado v. Procter and Gamble*, the doctrine of immutability of judgment is grounded on fundamental considerations of public policy and that adherence to said principle must be maintained by those who exercise the power of adjudication. x x x. The doctrine of immutability of judgments protects the substantive rights of the winning party. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of the case.

6. ID.; ID.; ID.; ID.; EXCEPTIONS TO THE IMMUTABILITY OF JUDGMENTS DOCTRINE; NOT PRESENT.— The immutability of judgments doctrine, to be sure, admits of several exceptions, to wit: (1) correction of clerical errors; (2) *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable. The Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby. A careful review of the circumstances surrounding this case reveals that none of the foregoing exceptions warranting the relaxation of the doctrine of immutability of judgments or any circumstance analogous to the said exceptions is present in this case. Moreover,

absolutely nothing transpired after the finality of the December 14, 2010 Resolution which would render its execution unjust and inequitable. It should, thus, be respected in its entirety.

7. REMEDIAL LAW; INTEGRATED BAR OF THE PHILIPPINES (IBP) BY-LAWS; IN CASE OF VACANCY IN THE POSITION OF THE IBP PRESIDENT, THE PERSON WHO SHALL ACT AS ACTING PRESIDENT WOULD ONLY SERVE DURING THE REMAINDER OF THE TERM.— [A]tty. Tan must be considered a mere *acting president* who served during the *transition period* and *before* the actual implementation of the rules on *rotation by exclusion.* This is clear under *Section 8 of Rule 139-A of the Rules of Court* x x x. Corollary thereto, *Section 11 of the IBP By-Laws* likewise states: **Section 11.** *Vacancies.* - Except as otherwise provided in these By- Laws, whenever the term of office or position, whether elective or appointive, is for a fixed period, **the person chosen to fill a vacancy therein shall serve only for the unexpired portion of the term.** From the foregoing, it is clear that in case of vacancy in the position of the IBP President, the **person who shall act as Acting President** would only **serve during the remainder of the term.** x x x. Atty. Tan was elected to fill the vacancy which was supposedly for Atty. Drilon of Greater Manila Region for the 1989-1991 term and with the understanding that, pursuant to the Rules, Atty. Tan would only serve for the *unexpired portion of the 1989- 1991 term.* In effect, Atty. Tan served as **Acting President** for the remainder **of a term which was *the turn of IBP Greater Manila Region*** from which Atty. Drilon belongs. After Atty. Tan resigned, EVP Tanopo of Central Luzon succeeded as Acting President pursuant to Section 8, Rule 139-A of the Rules until the end of Atty. Drilon's term on June 30, 1987. Thus, the tenure of Atty. Tan as Acting President for 1 year and 2 months during the 1989-1991 term of Atty. Drilon cannot in anyway be considered as the term of Western Visayas. Furthermore, the remainder of the said term is **still part of the previous term** which, technically, is a term existing ***before*** Bar Matter 491 took into effect and, thus, ***prior*** to the full implementation of the rotation by exclusion scheme. x x x. Since Atty. Tan became acting national president *by virtue of a special election* and *due to special circumstances,* Atty. Tan must be considered an *interim* president who served during the *transition period* and *before* the actual implementation of the

rules on *"rotation by exclusion"* for the EVP and *"automatic succession"* for the position of national president. Atty. Tan was elected as acting national president for the remainder of what would have been the 1989-1991 term of then president-elect Atty. Violeta C. Drilon of the Greater Manila Region because precisely there was no IBP president at that time.

8. ID.; ID.; ROTATION RULE; THE "ROTATION BY EXCLUSION" RULE PERTAINS IN PARTICULAR TO THE POSITION OF IBP-EVP, NOT TO THE POSITION OF THE IBP PRESIDENCY BECAUSE THE EVP MERELY ASSUMES THE PRESIDENCY AFTER THE LATTER'S TERM HAS EXPIRED.— [*V*]*elez v. De Vera*, penned by Justice Minita V . Chico-Nazario, enunciated that the rule on ***"rotation by exclusion" pertains in particular to the position of IBP-EVP*** and the ***IBP Presidency is merely a result of the automatic succession*** of the IBP-EVP to the Presidency.x x x. Further echoing the foregoing pronouncements, this Court, in its **December 14, 2012 Resolution,** ordered: 4. The **proposed amendments** to Section 31, 33, par. (g), 39, 42 and 43, Article V I and **Section 47, Article VI of the IBP By-Laws** as contained in the **Report and Recommendation of the Special Committee dated July 9, 2009 are hereby *approved* and *adopted***. In relation thereto, the *Report and Recommendation of the Special Committee dated July 9, 2009* provides: F. That in view of the fact that **the IBP no longer elects its President,** because the Executive Vice-President automatically succeeds the President at the end of his term, **Sec. 47, Article VII of the By-Laws should be amended** by **deleting the provision for the election of the President.** Moreover, for the strict implementation of the rotation rule, the Committee recommends that there should be a sanction for its violation, thus: Sec. 47 National Officer.—The Integrated Bar of the Philippines shall have a President, an Executive Vice President, and nine (9) Regional Governors. **The Executive Vice President shall be elected on a strict rotation basis by the Board of governors from among themselves,** by the vote of at least five (5) Governors. The Governors shall be *ex officio* Vice-President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors. x x x. By virtue of the foregoing amendments, it is already an **established** rule that the "**rotation rule applies to the position of the IBP EVP**" and *NOT to the election of national president* because

the EV P *merely assumes* the position of the national president after the latter's term has expired. It is, therefore, clear as day that the national president is not elected by the IBP Board of Governors under the *rotation by exclusion* rule, and, hence, does not participate in the rotation. Whatever is sometimes described as a "rotation of the presidency" actually means the rotation of the EVPs, which necessarily results in the rotation of the national presidents.

9. ID.; ID.; ID.; FOR A TURN IN THE ROTATION TO BE COMPLETE, ONE MUST FIRST BE ELECTED AS EVP FOR THE CURRENT TERM BEFORE HE CAN SERVE AS NATIONAL PRESIDENT FOR THE NEXT TERM; THE IBP-WESTERN VISAYAS IS THE ONLY REGION LEFT ENTITLED TO VIE FOR EVP IN THE CURRENT ROTATION.— With respect to the IBP Presidency, Section 47 of the IBP By-Laws provides the mandatory process of: **first**, *election of a Governor as EVP* and **second**, *automatic succession* to the office of IBP president *after* serving as EVP for the immediately preceding term. This means that for ***a turn in the rotation*** **to be *complete,* one must *first* be elected as EVP for the current term *before* he or she can serve as national president for the next term.** This process **must be satisfied *in strict sequence*** in order to consider that a specific IBP region had already *completed* its turn at the IBP leadership under the rotation by exclusion rule. As a consequence, under ordinary circumstances, a complete turn at IBP leadership is equivalent to *two years of service as EVP* for the immediately preceding term *plus* another *two years of service as IBP national president.* Hence, following the same line of thought and considering that Atty. Tan of the WVR did not become EVP in the immediately preceding term before he assumed office as IBP president, the start of the sequence or rotation should be reckoned from the time Atty. Tanopo, then Governor of IBP Central Luzon, became EVP, and that the turn of IBP Central Luzon was *deemed completed* when Atty. Tanopo became national president in 1991-1993. This was aptly reflected in the July 2009 Report and Recommendations of the *Special Committee which deemed it appropriate to start the rotation with Atty. Tanopo* and *not* with Atty. Tan. Apparently, ALL *of the other eight regions already had their complete turns at the IBP leadership* **except** for IBP-WVR. From the term of Atty. Tanopo until the present term of Atty. Libarios, *ALL of the eight regions* were given the opportunity to serve as

EVP during the immediately preceding term before they were able to assume office as IBP national president. This is, however, *not true* in the case of Atty. Tan ***as he was directly elected*** by the then IBP Board of Governors. **Atty. Tan was not elected as IBP-EVP** for the immediately preceding term before assuming office as IBP president and, in fact, **only IBP WVR has yet to have its turn for the IBP- EVP as a mandatory stepping stone to the IBP Presidency**. In all, the IBP EVP-to-IBP Presidency route prescribed under the IBP By-Laws was not, in the case of Atty. Tan, accomplished. Hence, there is *no reason to conclude that IBP-Western Visayas had already completed its turn under the rotation by exclusion rule*. Since the other eight IBP regions have already completed their respective turns, **the preordained conclusion is that IBP-Western Visayas is the ninth region and, therefore, the only region left entitled to vie for EVP in the current rotation**.

10. ID.; ID.; EACH AND EVERY REGION IS GIVEN A CHANCE AT THE IBP LEADERSHIP, TWO YEARS AS IBP-EVP AND ANOTHER TWO YEARS AS IBP-PRESIDENT; THE IBP WESTERN VISAYAS MUST BE AFFORDED THE OPPORTUNITY TO SIT AS IBP-EVP FOR THE TERM 2011-2013 AND AS IBP-PRESIDENT THEREAFTER BEFORE THE POSITION OF EVP MAY BE MADE OPEN TO OTHER REGIONS.— [T]he IBP top leadership structure provides for a ***two-year stint for the EVP*** *and* ***another two years for the national president***. From the context of **fairness** and under the objective of operationalizing the spirit and intention of the "rotation by exclusion rule" **to give each and every region a chance at the IBP leadership**, it would be **unfair** to consider Atty. Tan's tenure of just *one year and three months* as *equal* to the accumulated term of ***four years of service*** **which has already been accorded to all of the other eight regions**. The fact that Atty. Tan resigned while serving as interim IBP president is immaterial because *even if he did not resign, his tenure would still be less than two years* and, hence, less than the tenure *already* given to the other eight regions. This is clearly unfair for IBP-Western Visayas and definitely prejudicial to the interests of the lawyer-members of that region as it will be tantamount to deprivation of their right to elect an EVP, who will eventually become the regular national president. Thus, fair play demands that **IBP-Western Visayas** be afforded no less than the opportunity to sit as IBP-EVP for the term 2011-

2013 and as IBP president thereafter, ***before*** the position of the EVP may be made open to other regions.

11. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; POWERS; THE COURT'S SUPERVISORY POWER OVER THE INTEGRATED BAR OF THE PHILIPPINES AND ITS MEMBERS IS EXERCISED EITHER THROUGH ITS RULE-MAKING AUTHORITY OR THROUGH ITS ADJUDICATORY OR JUDICIAL POWER; EXPLAINED; THE DECEMBER 14, 2010 RESOLUTION OF THE COURT WAS MADE IN THE EXERCISE OF ITS ADJUDICATORY FUNCTIONS AS THE ISSUES THEREIN NECESSARILY INVOLVED A QUESTION OF WHO AMONG THE IBP REGIONS AND CANDIDATES ARE ELIGIBLE TO SERVE AS IBP-EVP AND NATIONAL PRESIDENT AND A DETERMINATION OF WHETHER THERE IS A NECESSITY TO IMPOSE DISCIPLINARY SANCTIONS AGAINST SOME ERRING MEMBERS AND OFFICERS OF THE IBP.— [T]he exercise of the Court's supervisory power over the IBP and its members is two pronged – meaning, it is exercised either through the Court's *rule-making authority* or through its *adjudicatory or judicial power.* Indeed, one is distinct from the other. The Court's rule-making power is dynamic in the sense that the Court may change the rules concerning the IBP as it deems best, necessary, practical and appropriate under the circumstances. On the other hand, the decisions arising from the Court's *adjudicatory or judicial power* cannot be easily changed as they involve a *resolution of the contending rights of parties,* which policy dictates should attain finality and, at some point, must reach an end. In its December 14, 2010 Resolution, this Court exercised its *adjudicatory functions* as the issues in that case necessarily involved a question of who among the IBP Regions and candidates are eligible to serve as IBP EVP and National President and a determination of whether there is a necessity to impose disciplinary sanctions against some erring members and officers of the IBP. As the title of the case would suggest, there were "*brewing controversies*" which required the exercise not only of the Court's supervisory powers over the IBP but also the Court's judicial power to settle actual case or controversies. By *controversy* means a disagreement or dispute, a litigated question, an adversary proceeding in a court of law, a civil action or suit either at law or in equity, a justiciable dispute. It involves an antagonistic

assertion of a legal right on one side and denial thereof on the other concerning a real, and not a mere theoretical question or issue. In this case, there is no question that actual controversies and concrete disputes were presented before the Court by factions with conflicting legal rights and interests pitted against each other, and demanding specific and conclusive reliefs. x x x. [T]he x x x cases involve assertions of legal rights of individuals in relation to crucial elective positions in the IBP on one side and denials thereof on the other. In resolving these warring interests, the Court had to evaluate and examine facts, interpret the rules governing the IBP, its members and officers, recall and study the IBP's history and structure, consider the report and recommendation of the Special Committee and rule on the rights and interests of the IBP regions and concerned IBP officials and members – all of which were done by the Court not only as an act of supervision over the IBP but, most importantly, to resolve the disputes among the parties. Thus, as far as these issues have been settled and resolved by the Court, they became final and no longer subject to review.

12. ID.; ID.; ID.; THE MITIGATION OF THE SANCTION IMPOSED OR THE GRANT OF CLEMENCY TO THE ERRING BAR MEMBER BY THE COURT DOES NOT MEAN THAT THE DECISION FINDING HIM ADMINISTRATIVELY LIABLE DID NOT BECOME FINAL AND EXECUTORY OR THAT THE COURT IS CHANGING ITS DECISION FINDING THE BAR MEMBER LIABLE, RATHER IT IS AN ACT OF LIBERALITY AND GENEROSITY ON THE PART OF THE COURT UPON SHOWING OF REFORMATION OF THE PETITIONER.— Cases calling for the exercise of this Court's disciplinary powers over lawyers and judges belong to a separate genre. Once the Court renders a decision in a disciplinary action against a member of the bar, such member is either suspended, disbarred or disciplined by some other means after the said decision becomes final and executory upon the lapse of the reglementary period for appeal or reconsideration. *That the Court may thereafter mitigate the sanction imposed or grant clemency or reprieve to the erring bar member does not mean that the decision finding him or her administratively liable did not become final and executory.* The mitigation or grant of clemency does not mean that the Court is changing its decision finding the bar member liable, rather it is an act of liberality and generosity on the part of the Court upon a showing of reformation of the

petitioner. The mitigation of the sanction imposed or the grant of clemency by the Court is *a matter or an issue entirely different* from the issues involved in the administrative case finding the lawyer or judge liable. In a petition for clemency, the petitioner actually admits the unethical behavior committed in the past and prays for the pardon of the Court based on facts and circumstances entirely different from his defenses in the administrative case and which surface way long after the decision is rendered. In fact, one of the requisites for a grant of judicial clemency or pardon is that there should be a final judgment. Thus, it is not true those administrative matters involving cases for unethical behavior of members of the bar do not become final and executory and that the doctrine of immutability of judgment does not apply to the same. Rather, the Court in effect affirms its decision but extends its liberality in exceptional circumstances where there is proof that the erring bar member has changed his or her ways or has suffered enough from the consequences of the sanctions imposed. In view thereof, the doctrine of immutability of judgments clearly applies to this Court's December 14, 2010 Resolution.

R E S O L U T I O N

MENDOZA, *J.*:

The Court, exercising its power of supervision over the Integrated Bar of the Philippines *(IBP)*, resolves this matter of the election of the Executive Vice-President *(EVP)* of the Integrated Bar of the Philippines *(IBP)* for the 2011-2013 term.

This administrative matter was triggered by the Petition for Intervention filed by petitioner-intervenor IBP-Southern Luzon Region *(IBP-Southern Luzon)*, seeking a declaration that the post of EVP-IBP for the 2011-2013 term be held open to all regions and that it is qualified to field a candidate for the said position.

This matter comes at the heels of the controversies resolved by the Court in its December 4, 2012 Resolution regarding the application of the rotation rule in determining which chapter of the IBP-Western Visayas region *(IBP-Western Visayas)* was

qualified to field a candidate for the position of governor. In the said resolution, the Court clarified that the rotation rule was one by exclusion. Similar to this recently resolved controversy, the present dilemma calls for the application of the rotation system at the national level.

The Factual Antecedents

To understand the nature of the controversy and the issues presented for resolution, an examination of the structure of the IBP and its history is in order.

In 1973, the Philippine Bar was integrated[1] to elevate the standards of the legal profession, to improve the administration of justice and to enable it to discharge its public responsibility more effectively.[2] Governing the IBP was the IBP Board of Governors *(IBP-BOG)*, consisting of the governors from each of the nine (9) geographic regions of the archipelago,[3] namely: Northern Luzon, Central Luzon, Southern Luzon, Greater Manila, Bicolandia, Eastern Visayas, Western Visayas, Eastern Mindanao, and Western Mindanao.[4] The governors of the IBP-BOG are, in turn, elected by the House of Delegates which consists of members duly apportioned among the chapters of each region.[5]

At the helm of the IBP is the IBP National President *(IBP-President)*,[6] who is automatically succeeded by the EVP. When the Philippine Bar was first integrated, both the IBP-President and the EVP were elected by the IBP-BOG from among themselves or from other members of the Integrated Bar,[7] with the right of automatic succession by the EVP to the presidency

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[1] http://www.ibp.ph/history.html (Last visited March 6, 2013).

[2] http://www.ibp.ph/mission.html (Last visited March 6, 2013).

[3] IBP By-Laws, Article VI, Sec. 47; see also Section 7, Rule 139-A.

[4] Section 37, IBP By-Laws in relation to Section 3, Rule 139-A.

[5] Section 6, Rule 139-A.

[6] IBP By-Laws, Article VI, Sec. 50.

[7] Section 7, Rule 139-A.

for the next succeeding full term. The presidency rotated among all the nine regions in such order as the IBP-BOG had prescribed.[8] Both the IBP-President and the EVP held a term of one (1) year, with the presidency rotating from year to year among the regions.[9]

On November 1, 1974, the **IBP By-Laws** took effect, providing that the IBP-President and the EVP be chosen by the Board of Governors from among nine (9) regional governors, as much as practicable, on a rotation basis.[10] It was also provided that the IBP-President and the EVP hold office for a term of two (2) years from July 1 following their election until June 30 of their second year in office and until their successors shall have been duly chosen and qualified.[11]

Later, several amendments in the IBP By-Laws were introduced, among which were the provisions relating to the election of its national officers. In ***Bar Matter No. 287,*** dated July 9, 1985, the Court approved the recommendation allowing the IBP-President, the EVP and the officers of the House of Delegates to be directly elected by the House of Delegates.[12]

Unfortunately, history recalls that this mode of electing the IBP national officers was marred with unethical politicking, electioneering and other distasteful practices. Thus, on October 6, 1989, the Court in ***Bar Matter No. 491,*** dated October 6, 1989, ordered: 1] the annulment of the just concluded national elections; 2] the abolition of the system of election of national officers by direct action of the House of Delegates; 3] the restoration of the former system of having the IBP-President and the EVP elected by the IBP-BOG from among themselves, with right of succession by the EVP to the presidency and

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[8] *Id.*

[9] *Id.*

[10] IBP By-Laws, Article VI, Section 47.

[11] IBP By-Laws, Article VI, Section 50.

[12] See Bar Matter No. 491, p. 31.

subject to the rule that "*the position of Executive Vice President of the IBP shall be rotated among the nine (9) IBP regions;*"[13] 4] the holding of special elections for the election of the first set of IBP-President and EVP;[14] and 5] the appointment of a caretaker board to administer the affairs of the IBP pending the holding of special elections.[15]

In the same ***Bar Matter No. 491,*** the Court ordered the amendment of **Section 47**, Article VII of the IBP By-laws, to read:

SEC. 47. National Officers. - The Integrated Bar of the Philippines shall have a President and Executive Vice President to be chosen by the Board of Governors from among nine (9) regional governors, as much as practicable, on a rotation basis. The governors shall be *ex officio* Vice President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors to be appointed by the President with the consent of the Board. (As amended pursuant to Bar Matter No. 491)

The Executive Vice President shall automatically become President for the next succeeding term. **The Presidency shall rotate among the nine Regions.**[16] [Emphasis supplied]

Following the rotation system just ordered, the following individuals representing the different regions of the IBP served as IBP-President:

1. Eugene Tan (Capiz)	Western Visayas	January 28, 1990-April 1991[17]
2. Numeriano Tanopo, Jr. (Pangasinan)	Central Luzon	April 1991-June 30, 1991

[13] *Id.* at 32.

[14] *Id.* at 34-35.

[15] *Id.* at 35.

[16] http://www.ibp.ph/d03.html.(Last visited: March 9, 2013).

[17] Resigned as IBP-President following charges of favoritism and discrimination; see *In The Matter of the Petition to Remove Atty. Jose A. Grapilon as President, Integrated Bar of the Philippines*, A.C. No. 4826, January 27, 1999 (http://sc.judiciary.gov.ph/jurisprudence/1999/apr99/ac_4826.htm; last visited March 29, 2013).

3. Mervin Encanto (Quezon City)	Greater Manila	1993-1995
4. Raoul R. Angangco (Makati)	Southern Luzon	1995-1997
5. Jose Aguila Grapilon (Biliran)	Eastern Visayas	1997-1999
6.Arthur Lim (Zambasulta)	Western Mindanao	1999-2001
7. Teofilo Pilando, Jr. (Kalinga Apayao)	Northern Luzon	2001-2003
8. JoseAnselmo Cadiz (Camarines Sur)	Bicolandia	2003-2005

On January 27, 1999, in ***Velez v. de Vera***,[18] reasoning that the rotation system applied only to the EVP, the Court considered the election of then EVP Leonard De Vera *(De Vera)*, representing the Eastern Mindanao region, as **one completing the first rotational cycle** and affirmed the election of Jose Vicente B. Salazar *(Salazar)* of the Bicolandia region as EVP. The Court explained that the rotational cycle would have been completed with the succession of EVP De Vera, representing Eastern Mindanao as IBP-President. For having misappropriated his clients' funds and committing acts inimical to the IBP-BOG and the IBP in general, De Vera was removed as governor of Eastern Mindanao and as EVP, and his removal was affirmed by the Court.

Thus, Salazar became IBP-President for the 2005-2007 term with Feliciano Bautista *(Bautista)* of Central Luzon as EVP. **The term of Salazar** was the **start of the second rotational cycle**. Bautista eventually succeeded to the IBP presidency with Atty. Rogelio Vinluan *(Vinluan)* as his EVP.

In 2009, however, the national and regional IBP elections were again tainted with numerous controversies, which were resolved by the Court in its **December 14, 2010 Resolution,**[19] in the following manner:

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[18] 528 Phil. 783, 810-812 (2006).

[19] *Rollo*, pp. 2998-3026.

WHEREFORE, premises considered, the Court resolves that:

1. The elections of Attys. Manuel M. Maramba, Erwin M. Fortunato and Nasser A. Marohomsalic as Governors for the Greater Manila Region, Western Visayas Region and Western Mindanao Region, respectively, for the term 2009-2011 are UPHELD;

2. A special election to elect the IBP Executive Vice President for the 2009-2011 term is hereby ORDERED to be held under the supervision of this Court within seven (7) days from receipt of this Resolution with Attys. Maramba, Fortunato and Marohomsalic being allowed to represent and vote as duly-elected Governors of their respective regions;

3. Attys. Rogelio Vinluan, Abelardo Estrada, Bonifacio Barandon, Jr., Evergisto Escalon, and Raymund Mercado are all found GUILTY of grave professional misconduct arising from their actuations in connection with the controversies in the elections in the IBP last April 25, 2009 and May 9, 2009 and are hereby disqualified to run as national officers of the IBP in any subsequent election. While their elections as Governors for the term 2007-2009 can no longer be annulled as this has already expired, Atty. Vinluan is declared unfit to hold the position of IBP Executive Vice President for the 2007-2009 term and, therefore, barred from succeeding as IBP President for the 2009-2011 term;

4. **The proposed amendments to** Sections 31, 33, par. (g), 39, 42, and 43, Article VI and **Section 47,** Article VII of the IBP By-Laws as contained in the Report and Recommendation of the Special Committee, dated July 9, 2009, are hereby approved and adopted; and

5. The designation of retired SC Justice Santiago Kapunan as Officer-in-Charge of the IBP shall continue, unless earlier revoked by the Court, but not to extend beyond June 30, 2011.

SO ORDERED.

Attempts to seek reconsideration of the Court's resolution were denied by the Court in its Resolution, dated February 8, 2011.[20]

Despite *Bar Matter No. 491* and *Velez*,[21] which recognized the operational fact that the rotation was from the position of

[20] *Id.* at 3240-3242.

[21] *Velez v. de Vera*, *supra* note 18.

President to that of the EVP, Section 47 was not immediately amended to reflect the official position of the Court. It was only amended through the *December 14, 2010 Resolution*.[22] **Section 47** of the IBP By-Laws now reads:

> Sec. 47. *National Officers.* – The Integrated Bar of the Philippines shall have a President, an Executive Vice President, and nine (9) regional Governors. **The Executive Vice President shall be elected on a strict rotation basis** by the Board of Governors from among themselves, by the vote of at least five (5) Governors. The Governors shall be *ex officio* Vice President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors.
>
> The violation of the rotation rule in any election shall be penalized by annulment of the election and disqualification of the offender from election or appointment to any office in the IBP.

In the special elections that were held thereafter, Roan I. Libarios *(Libarios)*, representing IBP-Eastern Mindanao Region, was elected EVP and he later on succeeded as president.

On April 27, 2011, the IBP-BOG, acting on the letter of then Gov. Erwin M. Fortunato *(Fortunato)* of IBP-Western Visayas requested that the Court provide guidance on how it would proceed with the application of the rotational rule in the regional elections for governor of IBP-Western Visayas.[23]

On December 4, 2012, the Court issued a resolution[24] addressing the issues with respect to the election of governor for IBP-Western Visayas. In clarifying that the ***rotational rule*** was one ***by exclusion***, the Court explained that in the election of governor of a region, all chapters of the region should be given the opportunity to have their nominees elected as governor, to the exclusion of those chapters that had already served in the rotational cycle. Once a rotational cycle would be completed, all chapters of a region, except the chapter which won in the immediately preceding elections, could once again have the

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[22] *Rollo*, pp. 2998-3026.

[23] *Id.* at 3282-3286.

[24] *Id.* at 3522-3532.

equal opportunity to vie for the position of governor of their region. The chapter that won in the immediately preceding election, under the rotational cycle just completed, could only vie for the position of governor after the election of the first governor in the new cycle.

The Current Controversy

Earlier, on July 27, 2012, IBP-Southern Luzon filed its *Motion for Leave to Intervene and to Admit the Attached Petition In Intervention*[25] and the subject *Petition In Intervention*,[26] seeking a declaration that the post of EVP for the 2011-2013 term be held open to all regions and that it be qualified to nominate a candidate for the position of EVP for the 2011-2013 term.

The Petition in Intervention was, in turn, opposed by Fortunato,[27] who insisted that IBP-Western Visayas was the only region that could vie for the position of EVP for the 2011-2013 term.

In the December 4, 2012 Resolution, the Court deferred its action on the intervention sought by the IBP-Southern Luzon and required the IBP-BOG to submit its comment.[28]

In its Comment, dated January 2, 2013, the IBP-BOG prayed that the *"IBP-Southern Luzon be allowed to nominate a candidate for EVP for the 2011-2013 term, without prejudice to the right of other regions except IBP-Eastern Mindanao, to do the same."*[29]

The opposition of Fortunato to the subject petition in intervention of IBP-Southern Luzon was joined by his successor, Marlou B. Ubano *(Ubano)*, Gov. Manuel L. Enage, Jr. of IBP-Eastern Visayas,[30] and the members of the House of Delegates of IBP-

[25] *Id.* at 3450-3453.

[26] *Id.* at 3454-3460.

[27] *Id.* at 3475-3486.

[28] *Id.* at 3531.

[29] *Rollo*, p. 3608.

[30] *Id.* at 3587-3596.

Western Visayas.[31] Nasser A. Marohomsalic *(Marohomsalic),*[32] one of the original parties in this case, Gov. Leonor Gernoa-Romeo[33] of IBP-Bicolandia, and the IBP-BOG [34] likewise filed their respective comments.

Position of IBP-Southern Luzon

In support of its bid to qualify in the election for EVP for the 2011-2013 term, IBP-Southern Luzon takes the following positions:

- In view of the Court's resolution to bar its representative, Vinluan, from succeeding as IBP-President for the 2009-2011 term, the IBP-Southern Luzon was effectively deprived of its right to the IBP presidency.[35]
- With the election of Eugene A. Tan as IBP-President (January 29, 1990-April 1991), IBP-Western Visayas should no longer be allowed to field a candidate in the forthcoming election for EVP.[36]
- As he was just elected on January 5, 2013, Ubano cannot be considered qualified to seek the position of EVP *cum* IBP-President due to his lack of experience.[37]

Position of IBP-Western Visayas

For its part, IBP-Western Visayas advances the following arguments in support of its position that it is the only region qualified to field a candidate for EVP for the 2011-2013 term:

- The Petition in Intervention of IBP-Southern Luzon should not be entertained as it would be contrary to Section 2, Rule

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[31] *Id.* at 3572-3584.

[32] *Id.* at 3544-3553.

[33] *Id.* at 3599-3602.

[34] *Id.* at 3607-3613.

[35] *Id.* at 3455.

[36] *Id.* at 3616-3617.

[37] *Id.* at 3620-3622.

19, it being filed following the finality of the December 14, 2010 Resolution of the Court.[38]

- With the term of current IBP-President Libarios coming to an end, IBP-Western Visayas is the only region left qualified to field a candidate for EVP, pursuant to the December 14, 2010 Resolution of the Court.[39]
- The IBP Southern Luzon had already taken its turn in the rotation system following the election of Vinluan as EVP (2007-2009) and Raoul R. Angangco *(Angangco)* who also served as EVP during the 1995-1997 term.[40]
- The election of Eugene Tan cannot be considered as part of the current rotation as he was elected following the special elections held as a result of the October 6, 1989 Resolution of the Court.

Synthesized, the core issues that must be addressed for the resolution of the Court are the following:

A. Whether the motion for intervention of IBP-Southern Luzon can be allowed and admitted.

B. Whether the first rotational cycle was completed with the election of Atty. Leonard De Vera.

C. Whether IBP-Southern Luzon has already served in the current rotation.

D. Whether the IBP-Western Visayas has already served in the current rotation.

The Motion for Intervention Should be Allowed and Admitted

There is no dispute that the Constitution has empowered the Supreme Court to promulgate rules concerning "the integrated bar."[41] Pursuant thereto, the Court wields a continuing power

[38] *Id.* at 3490.

[39] *Id.* at 3492-3493.

[40] *Id.* at 3493-3494.

[41] Section 5(5), Article VIII of the 1987 Constitution.

of supervision over the IBP and its affairs like the elections of its officers. The current controversy has been precipitated by the petition in intervention of IBP-Southern Luzon, praying that the election of the EVP for the 2011-2013 term be opened to all and that it be considered as qualified to field a candidate for the said position.

In the exercise of its continuing supervisory power, the Court is allowing the matter to be raised as an issue because it has not yet been squarely settled, as will be pointed out later on. Moreover, it is not only an exercise of its constitutional and statutory mandated duty, but also of its symbolic function of providing guiding principles, precepts and doctrines[42] for the purpose of steering the members of the bench and the bar to the proper path.

It should be noted that this is merely an *administrative matter, a bar matter* to be specific, where technical rules are not strictly applied. In fact, in administrative cases, *there is no rule regarding entry of judgment*. Where there is no entry of judgment, *finality* and *immutability* do not come into play. On several occasions, the Court has *re-opened administrative cases and modified its decisions that had long attained finality* in the interest of justice. A recent example is *Talens-Dabon v. Judge Arceo*,[43] where the Court lifted the ban against the disqualification of the respondent from re-employment in government. In *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Clemency*,[44] the Court granted clemency so the respondent could transfer to a higher position. In *Petition for Judicial Clemency of Judge Irma Zita v. Masamayor*,[45] the respondent was given judicial clemency for her past administrative offenses so she could apply for a lateral transfer.

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[42] *Salonga v. Pano*, 219 Phil. 402 (1985).

[43] A.M. No. RTJ-96-1336, November 20, 2012.

[44] A.M. No. 07-7-17-SC, September 19, 2007, 533 SCRA 534.

[45] A.M. No. 12-2-6-SC, March 6, 2012, 667 SCRA 467.

At any rate, granting that technical rules are strictly applied in administrative matters, the Court can exercise its power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it. "The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final."[46]

The First Rotational Cycle Already Completed

As earlier recited, Section 47 of the IBP By-Laws was amended in the December 14, 2010 Resolution[47] of the Court to read as follows:

> Sec. 47. National Officers. – The Integrated Bar of the Philippines shall have a President, an Executive Vice President, and nine (9) regional Governors. **The Executive Vice President shall be elected on a strict rotation basis** by the Board of Governors from among themselves, by the vote of at least five (5) Governors. The Governors shall be *ex officio* Vice President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors.
>
> The violation of the rotation rule in any election shall be penalized by annulment of the election and disqualification of the offender from election or appointment to any office in the IBP.

From the above, it is clear that the amendment was effected to underscore the shift of the rotation from the position of president to that of EVP. The purpose of the system being to ensure that all the regions will have an equal opportunity to serve as EVP and then automatically succeed as president.

As previously mentioned, in *Velez*,[48] the Court stated that the rotation system applies to the election of the EVP only and considered **the service of then EVP De Vera**, representing the Eastern Mindanao region, as having **completed**

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[46] *Keppel Cebu Shipyard, Inc. v. Pioneer Insurance and Surety Corporation*, G.R. Nos. 180880-81, September 18, 2012.

[47] *Rollo*, pp. 2998-3026.

[48] *Velez v. de Vera*, *supra* note 18.

the first rotational cycle. For said reason, the Court affirmed the election of Salazar of Bicolandia as EVP. The Court explained that the rotation cycle with respect to the presidency would have been completed with the succession of EVP De Vera as IBP-President. The specific words used in *Velez*[49] were:

> In Bar Matter 491, it is clear that it is the position of IBP EVP which is actually rotated among the nine Regional Governors. The rotation with respect to the Presidency is merely a result of the automatic succession rule of the IBP EVP to the Presidency. Thus, the rotation rule pertains in particular to the position of IBP EVP, while the automatic succession rule pertains to the Presidency. The rotation with respect to the Presidency is but a consequence of the automatic succession rule provided in Section 47 of the IBP By-Laws.
>
> In the case at bar, the rotation rule was duly complied with since upon the election of Atty. De Vera as IBP EVP, **each of the nine IBP regions had already produced an EVP** and, thus, **the rotation was completed**. It is only unfortunate that the supervening event of Atty. de Vera's removal as IBP Governor and EVP rendered it impossible for him to assume the IBP Presidency. The fact remains, however, that the rotation rule had been completed despite the non-assumption by Atty. de Vera to the IBP Presidency.

The notion that the ruling in *Velez* [50] should not be considered at all by the Court because it is barred by the Omnibus Motion Rule deserves scant consideration. It may have been earlier overlooked, but the Court is not barred from *motu proprio* taking judicial notice of such judicial pronouncement, pursuant to its continuing supervisory powers over the IBP.

The Second Rotational Cycle

While there may have been no categorical pronouncement in *Velez* that the second rotational cycle started with the election of Salazar as EVP, it cannot be denied that it was so. With the *Velez* declaration that the election of De Vera as EVP completed the first cycle, there can be no other consequence except that

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[49] *Id.*

[50] *Id.*

the term of EVP Salazar commenced a new rotational cycle. From the records, it appears that the following had already served **as EVP** in the Second Rotational Cycle:

1. Jose Vicente Salazar	Bicolandia	2005
2. Feliciano M. Bautista	Central Luzon	2005-2007
3. Rogelio Vinluan	Southern Luzon	2007-2009
4. Roan L. Libarios	Eastern Mindanao	2009-2011

As there were only four (4) regions which had served as EVP, there are still five (5) other regions which have not yet so served. These regions are:

1. Northern Luzon
2. Greater Manila Area
3. Eastern Visayas
4. Western Visayas
5. Western Mindanao

Needless to state, Western Visayas is not the only region that can vie for EVP for the 2011-2013 term. This answers the query of Fortunato.

With respect to IBP-Southern Luzon, following the ruling in *Velez*,[51] it is clear that it already had its turn to serve as EVP in the Second Rotational Cycle.

The Special Committee failed to take into account the Velez ruling

In arriving at its December 14, 2010 Resolution,[52] the Court then was confronted with limited issues. Among those were: **1]** the validity of the election of Nasser A. Marohomsalic as governor of the IBP-Western Mindanao Region; **2]** the validity

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[51] *Id.*

[52] *Rollo,* pp. 3021-3022.

of the election of Manuel M. Maramba as governor for the Greater Manila Region for the term 2009-2011; **3]** the validity of the election of Erwin M. Fortunato as governor for Western Visayas Region for the term 2009-2011; and **4]** the validity of the elections for EVP for the 2009-2011 term presided by then IBP-President Bautista. The four issues were intertwined since the validity of the elections presided by IBP-President Bautista was questioned on the alleged lack of quorum, as it was attended by Marohomsalic, whose own election was then also being questioned.

With those limited issues resolved, the Court directed that special elections should be held for the election of EVP for the remaining 2009-2011 term "to heal the divisions in the IBP and promote unity by enabling all the nine (9) governors-elect to elect the EVP in a unified meeting called for that purpose."[53] In ordering the special elections to be conducted, the Court took into account the report of the Special Committee as follows:

> The list of national presidents furnished the Special Committee by the IBP National Secretariat, shows that the governors of the following regions were President of the IBP during the past nine (9) terms (1991-2009):
>
> Numeriano Tanopo, Jr. (Pangasinan) – Central Luzon —1991-1993
>
> Mervin G. Encanto (Quezon City) ——Manila ———— 1993-1995
>
> Raoul R. Angangco (Makati) ———— Southern Luzon—1995-1997
>
> Jose Aguila Grapilon (Biliran) ——— Eastern Visayas–1997-1999
>
> Arthur D. Lim (Zambasulta) ———Western Mindanao—1999-2001
>
> Teofilo S. Pilando, Jr. (Kalinga-Apayao)-Northern Luzon—2001-2003
>
> Jose Anselmo I. Cadiz (Camarines Sur) –Bicolandia —— 2003-2005
>
> Jose Anselmo I. Cadiz (Camarines Sur) –Bicolandia—2005-Aug 2006
>
> Jose Vicente B. Salazar (Albay) ———Bicolandia—Aug. 2006-2007
>
> Feliciano M. Bautista (Pangasinan) ——Central Luzon— 2007-2009

[53] *Id.* at 2998-3026.

Only the governors of the Western Visayas and Eastern Mindanao regions have not yet had their turn as Executive Vice President cum next IBP President, while Central Luzon and Bicolandia have had two (2) terms already.

Therefore, either the governor of the Western Visayas Region, or the governor of the Eastern Mindanao Region should be elected as Executive Vice-President for the 2009-2011 term. The one who is not chosen for this term, shall have his turn in the next (2011-2013) term. Afterwards, another rotation shall commence with Greater Manila in the lead, followed by Southern Luzon, Eastern Visayas, Western Mindanao, Northern Luzon, Bicolandia, Central Luzon, and either Western Visayas or Eastern Mindanao at the end of the round.[54]

Apparently, the report of the Special Committee failed to take into account the ruling in *Velez* [55] that the service of then EVP Leonard De Vera, representing the Eastern Mindanao region, **completed the first rotational cycle**.

Thus, it committed **two inaccuracies**. ***First***, it erroneously reported that "only the governors of the Western Visayas and Eastern Mindanao regions have not yet had their turn as Executive Vice President." ***Second***, it erroneously considered Central Luzon and Bicolandia as having had two terms each in the First Rotational Cycle, when their second services were for the Second Rotational Cycle.

The unfortunate fact, however, is that the erroneous statements of the Special Committee were used as bases for the recommendation that "either the governor of the Western Visayas Region, or the governor of the Eastern Mindanao Region should be elected as Executive Vice-President for the 2009-2011 term."

Worse, they were cited by IBP-Western Visayas as bases to oppose the Petition in Intervention of IBP-Southern Luzon, arguing that it would be contrary to Section 2, Rule 19, it being filed following the finality of the December 14, 2010 Resolution[56] of the Court.

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[54] Resolution, December 14, 2010, *id.* at 3021-3022.

[55] *Velez v. de Vera*, *supra* note 18.

[56] *Rollo*, pp. 2998-3026.

At any rate, the statement of the Court in its December 14, 2010 Resolution[57] that "only the governors of the Western Visayas and Eastern Mindanao regions have not yet had their turn as Executive Vice President," did not pertain to the *lis mota* of the case. Thus, it did not settle anything so as to be deemed a precedent-setting ruling. Those statements, therefore, could not be considered as overturning, vacating and setting aside the ruling in *Velez*[58] that the service of then EVP De Vera **completed the first rotational cycle**.

The election of Eugene Tan As IBP President

Much has been said about the election of Eugene Tan as IBP-President. *IBP-Southern Luzon* argues that with his election and service as IBP-President from January 29, 1990 to April 1991, the IBP-Western Visayas should no longer be allowed to field a candidate in the forthcoming elections for the EVP.[59] *IBP-Western Visayas* counters that his election could not be considered as part of the current rotation as he was elected following the special elections held as a result of the October 6, 1989 Resolution of the Court. It has also been argued that he merely served as Interim President.

As *Velez*[60] declared that the election of EVP De Vera completed the first rotational cycle, it could only mean that all regions had their respective turns in the first rotational cycle. Thus, in this second rotational cycle, issues as to the nature of his election and service as IBP-President during the First Rotational Cycle are inconsequential.

At any rate, Eugene Tan could not be considered as an interim president. It was Justice Felix Antonio who was designated by the Court as Interim Caretaker until the election of the IBP-President by the elected IBP-BOG. The election of the new

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[57] *Id.*

[58] *Velez v. de Vera, supra* note 18.

[59] *Rollo,* pp. 3616-3617.

[60] *Velez v. de Vera, supra* note 18.

President and Executive Vice-President was directed by the Court itself and in no way can it be said that they served on an interim basis. Besides, at that time, under Section 47, the rotation concerned the presidency only. Section 47 was ordered to be amended only in the December 14, 2010 Resolution,[61] despite *Bar Matter No. 491* and *Velez*,[62] which recognized the operational fact that the rotation was from the position of President to that of EVP.

If Eugene Tan served only up to April, 1991, it was not because he served merely in the interim. He served up to that time only because he **resigned**. As reflected in **Bar Matter No. 565**, dated October 15, 1991, Tan resigned as IBP-President when he was charged by several staff members of the IBP in a letter-complaint to the Chief Justice, with favoritism or discrimination in the hiring of officers and employees in the IBP and with extravagant and irregular expenditure of IBP funds. The Court found the acts of Eugene Tan as constituting grave abuse of authority and serious misconduct in office, which would have warranted his removal from office. Considering that he had earlier tendered his resignation as IBP-President and his term of office already expired on June 30, 1991, the Court imposed on him the penalty of severe censure only.[63]

Moreover, in *A.M. No. 491*, the Court stressed that: "One who has served as President of the IBP may not run for election as EVP-IBP in a succeeding election until after the rotation of the presidency among the nine (9) regions shall have completed; whereupon the rotation shall begin anew."

Rotation by Exclusion

As clarified in the December 4, 2012 Resolution of the Court, the rotation should be by exclusion. In said resolution, it was stated:

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[61] *Rollo*, pp. 2998-3026.

[62] *Velez v. de Vera*, *supra* note 18.

[63] Cited in A.M. No. 4826, January 27, 1999, *In The Matter of the Petition To Remove Atty. Jose A. Grapilon as President, Integrated Bar of the Philippines*. (http://sc.judiciary.gov.ph/jurisprudence/1999/apr99/ac-4826.htm; last visited March 29, 2013).

Resolution of the Court

Re: IBP-Western Visayas Region

After an assiduous review of the facts, the issues and the arguments raised by the parties involved, the Court finds wisdom in the position of the IBP-BOG, through retired Justice Santiago M. Kapunan, that at the start of a new rotational cycle "all chapters are deemed qualified to vie for the governorship for the 2011-2013 term without prejudice to the chapters entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each chapter will have its turn in the rotation." Stated differently, the IBP-BOG recommends the adoption of the rotation by exclusion scheme. The Court quotes with approval the reasons given by the IBP-BOG on this score:

6. After due deliberation, the Board of Governors agreed and resolved to recommend adherence to the principle of **"rotation by exclusion"** based on the following reasons:

a) Election through "rotation by exclusion" is the more established rule in the IBP. The rule prescribes that once a member of the chapter is elected as Governor, his chapter would be excluded in the next turn until all have taken their turns in the rotation cycle. Once a full rotation cycle ends and a fresh cycle commences, all the chapters in the region are once again entitled to vie but subject again to the rule on rotation by exclusion.

b) Election through a "rotation by exclusion" allows for a more democratic election process. The rule provides for freedom of choice while upholding the equitable principle of rotation which assures that every member-chapter has its turn in every rotation cycle.

c) On the other hand, rotation by pre-ordained sequence, or election based on the same order as the previous cycle, tends to defeat the purpose of an election. The element of choice – which is crucial to a democratic process – is virtually removed. Only one chapter could vie for election at every turn as the entire sequence, from first to last, is already predetermined by the order in the previous rotation cycle. This concept of rotation by pre-ordained sequence negates freedom of choice, which is the bedrock of any democratic election process.

d) The pronouncement of the Special Committee, which the Supreme Court may have adopted in AM No. 09-5-2-SC, involving the

application of the rotation rule in the previous election for GMR may not be controlling, not being one of the principal issues raised in the GMR elections.

7. Thus, applying the principle of 'rotation by exclusion' in Western Visayas which starts with a new rotation cycle, all chapters (with the exception of Romblon) are deemed qualified to vie for the Governorship for 2011-2013 term without prejudice to the chapters entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each chapter will have its turn in the rotation.

The Court takes notice of the predictability of the rotation by succession scheme. Through the rotation by exclusion scheme, the elections would be more genuine as the opportunity to serve as Governor at any time is once again open to all chapters, unless, of course, a chapter has already served in the new cycle. While predictability is not altogether avoided, as in the case where only one chapter remains in the cycle, still, as previously noted by the Court "the rotation rule should be applied in harmony with, and not in derogation of, the sovereign will of the electorate as expressed through the ballot."

Thus, as applied in the IBP-Western Visayas Region, initially, all the chapters shall have the equal opportunity to vie for the position of Governor for the next cycle except Romblon, so as no chapter shall serve consecutively. Every winner shall then be excluded after its term. Romblon then joins the succeeding elections after the first winner in the cycle.[64]

As stated therein, it would be without prejudice to the regions entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle, provided each region would have its turn in the rotation.

As noted by the Court in its December 4, 2012 Resolution, there is a sense of predictability in the rotation by the pre-ordained scheme. Through the rotation by exclusion scheme, the elections will be more genuine, as the opportunity to serve at any time is once again open to all, unless, of course, a region has already served in the new cycle. While predictability is not

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[64] Resolution, dated December 4, 2012, *rollo*, pp. 3004-3005.

altogether avoided, as in the case where only one region remains in the cycle, still, as previously noted by the Court "the rotation rule should be applied in harmony with, and not in derogation of, the sovereign will of the electorate as expressed through the ballot."[65]

The December 14, 2010 Resolution

That the Court, in its December 14, 2010 Resolution,[66] ordered the election of the EVP-IBP for the next term based on the inaccurate report of the Special Committee, is a fact. That cannot be erased. As a consequence thereof, Libarios of IBP-Eastern Mindanao is now the IBP President. He, however, is part of the **second rotational cycle** because **1]** in *Velez*[67] it was categorically ruled that the service of then EVP De Vera, representing the Eastern Mindanao region, **completed the first rotational cycle**; and **2]** he could not be part of the first rotational cycle because EVP de Vera of the same region had already been elected as such.

It is to be noted that in the December 14, 2010 Resolution,[68] the Court did not categorically overturn the ruling in *Velez.*[69] It merely directed the election of the next EVP, without any reference to any rotational cycle.

To declare that the first rotational cycle as not yet completed will cause more confusion than solution. In fact, it has spawned this current controversy. To consider the service of current president, Libarios, as part of the first rotational cycle would completely ignore the ruling in *Velez.*[70]

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[65] *Id.* at 3019.

[66] *Id.* at 2998-3026.

[67] *Velez v. de Vera, supra* note 18.

[68] *Rollo,* pp. 2998-3026.

[69] *Velez v. de Vera, Supra* note 18.

[70] *Id.*

The Best Option: Open to All Regions

How then do we treat the turns of those who had already served in the second rotational cycle? Shall we treat them as anomalies? As aberrant developments, as Justice Brion puts it?

A remedy is to reconcile the conflicting decisions and resolutions with nothing in mind but the best interest of the IBP. It appears from the pleadings, however, that the differences are irresoluble.

To avoid the endless conflicts, confusions and controversies which have been irritably plaguing the IBP, the solution is to start another rotational round, ***a new cycle***, ***open to all regions.*** At any rate, all regions, after the election of Libarios, would be considered as already having its turn in the presidency. This is not to detract from the fact that under Section 47, as amended, and from the pertinent rulings, the position of EVP-IBP is the one being actually rotated, but as stated in the December 14, 2010 Resolution,[71] it will enable the IBP "to start on a clean and correct slate, free from the politicking and the under handed tactics that have characterized the IBP elections for so long."

Section 47 of the IBP By-Laws should be further amended

Whatever the decision of the Court may be, to prevent future wranglings and guide the IBP in their future course of action, Section 47 and Section 49 of the IBP By-laws should again be amended. Stress should be placed on the automatic succession of the EVP to the position of the president. Surprisingly, the automatic succession does not appear in present Section 47, as ordered amended by the Court in the December 14, 2010 Resolution. It should be restored. Accordingly, Section 47 and Section 49, Article VII, are recommended to read as follows:

Sec. 47. Election of National President Executive Vice President. – The Integrated Bar of the Philippines shall have a President, an Executive Vice President, and nine (9) regional Governors. The Governors shall be *ex-officio* Vice President for their respective regions.

[71] *Rollo*, pp. 2998-3026.

The Board of Governors shall elect the President and Executive Vice President from among themselves each by a vote of at least five (5) Governors. Upon expiration of the term of the President, the Executive Vice-President shall automatically succeed as President.

Each region, as enumerated under Section 3, Rule 139-A of the Rules of Court, shall have the opportunity to have its representative elected as Executive Vice-President, *provided that*, the election for the position of Executive Vice President shall be on a strict rotation by exclusion basis. A region, whose representative has just been elected as Executive Vice President, can no longer have its representative elected for the same position in subsequent elections until after all regions have had the opportunity to be elected as such. At the end of the rotational cycle, all regions, except the region whose representative has just served the immediately preceding term, may be elected for another term as Executive Vice-President in the new rotational cycle. The region whose representative served last in the previous rotational cycle may be elected Executive Vice-President only after the first term of the new rotational cycle ends, subject once more to the rule on exclusion.

The order of rotation by exclusion shall be without prejudice to the regions entering into a consensus to adopt any pre-ordained sequence in the new rotation cycle provided each region will have its turn in the rotation.

A violation of the rotation rule in any election shall be penalized by annulment of the election and disqualification of the offender from election or appointment to any office in the IBP.

SEC. 49. Terms of office. - The President and the Executive Vice-President shall hold office for a term of two years from July 1 following their election until June 30 of their second year in office and until their successors shall have been duly chosen and qualified.

In the event the President is absent or unable to act, his functions and duties shall be performed by the Executive Vice President, and in the event of the death, resignation, or removal of the President, the Executive Vice President shall serve as Acting President for the unexpired portion of the term. His tenure as such shall not be considered a new turn in the rotation.

In the event of death, resignation, removal or disability of the Executive Vice President, the Board of Directors shall elect among

the regions qualified to be elected as Executive Vice President to serve the unexpired portion of the term or period of disability.

In the event of the death, resignation, removal or disability of both the President and the Executive Vice President, the Board of Governors shall elect an Acting President to hold office for the unexpired portion of the term or during the period of disability. Unless otherwise provided in these By-Laws, all other officers and employees appointed by the President with the consent of the Board shall hold office at the pleasure of the Board or for such term as the Board may fix.

Creation of a permanent Committee for IBP Affairs

To further avoid conflicting and confusing rulings in the various IBP cases like what happened to this one, the December 14, 2010 Resolution and *Velez,*[72] it is recommended that the Court create a committee for IBP affairs to primarily attend to the problems and needs of a very important professional body and to make recommendation for its improvement and strengthening.

WHEREFORE, the Court hereby resolves to:

1] **GRANT** the Motion for Leave to Intervene and to Admit the Attached Petition In Intervention;

2] **DECLARE** that the election for the position of the EVP for the 2011-2013 term be **open to all regions.**

3] **AMEND** Section 47 and Section 49, Article VII of the IBP By-Laws to read as recommended in the body of this disposition.

4] **CREATE** a permanent Committee for IBP Affairs.

SO ORDERED.

Sereno, C.J., Bersamin, Abad, Villarama, Jr., Perez, and *Reyes, JJ.,* concur.

Leonardo-de Castro, J., concurs and also with the separate concurring opinion of Justice Brion.

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[72] *Velez v. de Vera, supra* note 18.

Brion and *Leonen, JJ.*, see separate concurring opinions.

Carpio, Del Castillo, and *Perlas-Bernabe, JJ.*, join the dissent of Justice Velasco, Jr.

Velasco, Jr., J., dissents. (Please see dissenting opinion.)

Peralta, J., no part.

SEPARATE CONCURRING OPINION

BRION, *J.*:

I **concur** with the conclusion reached by **Justice Jose Catral Mendoza** that the *IBP-Western Visayas is not the only region that has not been chosen by the Board of Governors (BOG) for the post of Executive Vice President (EVP) in the current rotational cycle*, and cannot therefore automatically claim the EVP position for the 2011-2013 term.

I **dispute** the positions in **Justice Presbitero J. Velasco, Jr.'s Dissent** relating to the nature of the rulings of this Court in administrative matters, particularly his application of the doctrine of immutability of judgments, the strict application of the Rules of Court in administrative matters, and all his other arguments proceeding from these premises.

The **best and most responsible recourse** for the Court to take under the circumstances – taking into account its *constitutional supervisory authority* over the Integrated Bar of the Philippines (*IBP*), and the already confused IBP electoral history – is **to order an *election for the EVP position for the 2011-2013 term open to all regions and thereby recognize the start of a new rotational cycle for the IBP pursuant to the December 14, 2010 amendment of Section 47, Article VII of the IBP By-laws***.

As a **pro-active response** of the Court to clear the seeds of confusion that has plagued the IBP and to stress the need for continuing study and consultations between the Court and the IBP on what is best for the organization, I propose the **creation of a new continuing IBP Committee** in the Court to ***generally handle the IBP's affairs; to study and suggest***

recommendations; to take the lead and initiative in efforts concerning the IBP; and to troubleshoot whatever problems may occur, instead of creating a special committee whenever an IBP problem arises.

The IBP

I begin with a brief background of the organizational structure of the IBP, the official organization of all Philippine lawyers (now numbering about 50,000) whose names appear in the Roll of Attorneys of the Supreme Court.[1] The IBP is divided into **nine (9) geographic regions**, namely: "Northern Luzon, Central Luzon, Southern Luzon, Bicolandia, Greater Manila, Western Visayas, Eastern Visayas, Western Mindanao and Eastern Mindanao."[2]

Each of these regions is subdivided into Chapters and is represented by a Governor elected by delegates from among the member-Chapters of each region.[3] These nine (9) Governors constitute the BOG which governs and has general charge of the IBP's affairs and activities.[4] Aside from the Governors, the other national officers of the IBP are: the **IBP President**, the **EVP,** the National Secretary, the National Treasurer, and the heads of the National Committees.[5]

The IBP President, the EVP and the Governors hold office for two (2) years, from July 1 of their first year until June 30 of their second year in office.[6] After their election to the BOG, the members elect from among themselves the new EVP who

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[1] See: IBP website, available online at http://www.ibp.ph/history.html (last visited on February 27, 2012).

[2] See: Dissenting Opinion of Associate Justice Presbitero J. Velasco, Jr. in *In the Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines,* A.M. No. 09-5-2-SC and A.C. No. 8292, December 14, 2010, 638 SCRA 1, 55.

[3] IBP By-Laws, Article VI, Section 37.

[4] IBP By-Laws, Article VI, Section 41.

[5] IBP By-Laws, Article VII, Sections 47-48.

[6] IBP By Laws, Article VII, Section 49.

– previous to the recent December 14, 2010 amendments – automatically and expressly served as the IBP President for the next term.[7]

The IBP President is the Chief Executive Officer of the IBP. He presides over all meetings of the BOG.[8] The EVP, on the other hand, exercises the powers, functions and duties of the IBP President during the latter's absence or inability to act, and perform such other functions and duties the IBP President and the BOG may assign to him. The EVP as an incumbent Governor, is a voting member of the BOG.[9]

The Controversy

The ***current controversy***[10] before us directly followed and is related to an earlier controversy – the election of the Governor for the IBP-Western Visayas for the 2011-2013 term. This earlier controversy posed the question of how the required rotation of the post of Governor should be applied to the IBP member-Chapters in that region.

We resolved this earlier IBP-Western Visayas controversy through our **December 4, 2012 Resolution** in the present Administrative Matter.[11] We held that all the chapters in a region shall have the equal opportunity to compete for the position

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[7] IBP By-Laws, Article VII, Section 47. *Supra* note 2.

[8] IBP By-Laws, Article VII, Section 50(a).

[9] IBP By-Laws, Article VII, Section 50(b). See Dissenting Opinion of Associate Justice Presbitero J. Velasco, Jr. in *In the Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, supra* note 2.

[10] Note that, as shown in the discussions, the IBP has had a series of problems, coming one after another, subsumed under the title "Brewing Controversies" docketed as A.M. No. 09-5-2-SC – *IN THE MATTER OF THE BREWING CONTROVERSIES IN THE ELECTIONS OF THE INTEGRATED BAR OF THE PHILIPPINES* and A.C. No. 8292 – *ATTYS. MARCIAL M. MAGSINO, MANUEL M. MARAMBA AND NASSER MAROHOMSALIC, Complainants, versus ATTYS. ROGELIO A. VINLUAN, ABELARDO C. ESTRADA, BONIFACIO T. BARANDON, JR., EVERGISTO S. ESCALON AND REYMUND JORGE A. MERCADO, Respondents.*

[11] A.M. No. 09-5-2-SC and A.C. No. 8292, December 4, 2012.

of Governor during one rotational cycle and can only serve once during that cycle; every winning Chapter shall be excluded after serving its term during the cycle, and shall be eligible to serve as Governor only in the next rotational cycle.[12]

In contrast with the earlier local IBP-Western Visayas problem, the current problem affects the IBP ***at the national level*** as it raises the issue of who should be eligible for election as **EVP** for the current 2011-2013 term. This EVP post, incidentally, is still vacant for the reasons explained below.

The eligibility issue surfaced after **IBP-Southern Luzon** intervened in the present Administrative Matter with the position that the *election for the post of EVP for the current 2011-2013 term should now be open to all regions.*

IBP-Western Visayas opposes the IBP-Southern Luzon's position and maintains that under the IBP's prevailing rotation by exclusion rule, *IBP-Western Visayas is the only region that has not been chosen by the BOG for the post of EVP in the current rotation cycle*, and should thus automatically hold the EVP position for the 2011-2013 term.

At stake in these opposing positions is not only the EVP position for the current 2011-2013 term, but the IBP Presidency for the 2013-2015 term under the IBP's unexpressed rule on succession. At a **deeper level**, however, and from the perspective of IBP history and its best interest, the issue is best expressed as:

> Should the Court now recognize the **start of a new rotational cycle pursuant to the December 14, 2010 amendment** of the IBP By-laws and thereby start a new rotational cycle with a *clean slate and unburdened by the confused electoral records of the past*?

This formulation poses complicated issues of interpretation, IBP history, objectives and best interests, and requires a **bold and decisive solution** from this Court.

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[12] *Ibid.*

The Primary Governing Law

The logical starting point of this consideration is the source from where the present problem can be traced – ***Section 47, Article VII of the IBP By-Laws, as amended by Bar Matter No. 491***. The provision states:

> Section 47. *National Officers*. — The Integrated Bar of the Philippines shall have a President and Executive Vice President to be **chosen by the Board of Governors from among nine (9) regional governors, as much as practicable, on a rotation basis.** The governors shall be *ex officio* Vice President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors to be appointed by the President with the consent of the Board. x x x
>
> **The Executive Vice President shall automatically become President for the next succeeding term. The Presidency shall rotate among the nine Regions.** [emphases ours; italics supplied]

In its December 14, 2010 Resolution in the present Administrative Matter,[13] the Court ***further amended Section 47, Article VII of the IBP By-Laws*** by deleting the provision on the election of the President considering that the "IBP no longer elects its President" since "the [EVP] automatically succeeds the President at the end of his term."[14] The provision, as further amended, now reads:

> Sec. 47. *National Officers.* – The Integrated Bar of the Philippines shall have a President, an Executive Vice President, and nine (9) regional Governors. **The Executive Vice President shall be elected on a strict rotation basis by the Board of Governors from among themselves, by the vote of at least five (5) Governors.** The Governors shall be *ex officio* Vice President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors.
>
> The violation of the rotation rule in any election shall be penalized by annulment of the election and disqualification of the offender from

[13] *Supra* note 2.

[14] *Id.* at 14.

election or appointment to any office in the IBP.[15] (italics and emphasis supplied)

Interestingly, this new provision – while intending an automatic succession to the Presidency – *does not expressly so provide*.

a. <u>The Elements of the amended Section 47, Article VII of the IBP By-Laws</u>

Broken down to its components, Section 47, as amended, contains the following elements:

1. The IBP shall have a BOG consisting of nine (9) regional Governors, and its national officers shall be the President, the EVP, the Secretary, and the Treasurer, with each member of the BOG serving as *ex officio* Vice-President for their respective regions.
2. **The EVP shall be elected on a strict rotation basis** by the BOG from among themselves, by the vote of at least five (5) Governors.
3. Any violation of the rotation rule shall be penalized by annulment of the election and disqualification of the offender from election or appointment to any office in the IBP.

Elements (1) and (3) do not materially figure in, nor do they contribute to, the controversy. The problem, as has happened in the past, relates to the ***element of rotation where its manner is the disputed issue***.

b. <u>Some Questions and Answers</u>

A first basic question that should be answered is: **what position, according to the IBP By-Laws, should rotate?**

The ***<u>previous version</u>*** of Section 47, Article VII of the IBP By-Laws (as amended by Bar Matter No. 491) provides the ready and express answer – the Presidency should rotate among the nine (9) regions.

In other words, a rotation *previously* required that all nine (9) regions, through their respective Governors, shall at some

[15] *Id.* at 15.

time during a rotational cycle take their "turn" as IBP President. This directive was by the express and direct wording of the By-Laws and could not thus be simply disregarded; it was the Presidency that must rotate among the regions, subject only to the "as much as practicable" qualifier.

In other words, the ***previous rule*** on rotation was considered *from the* ***prism of the Presidency***, *not from the prism of the EVP*. This requirement for presidential rotation stood firm until its amendment under the Court's December 14, 2010 Resolution cited above.

The new amendment now requires that "the EVP shall be elected on a strict rotation basis by the BOG from among themselves." This means that the EVP position should rotate among the nine (9) regions. Whether the EVP will be the President in the next term, the present By-Laws do not expressly state but this is the intent expressed by the Court in its December 14, 2010 Resolution.

Thus, the rotation rule should now be considered ***from the prism of the EVP,*** not from the prism of the Presidency; it is now the EVP that must be counted, considered and assured. *The rotation of the Presidency is now only a subsidiary consideration that must bow to the primacy of the EVP's rotation*.

c. Historical Perspectives

How the IBP and the Supreme Court have ***actually applied*** the rotation requirement is interesting and, to some extent, confusing.

c.i. Evolution of the IBP Electoral System

An overriding consideration in looking at the rotational rule and its application is its origin since rotation has not consistently been the rule in the IBP.

The system of electing IBP Governors and the choice of national officials by the BOG came with the ***original IBP By-***

Laws in 1973.[16] The ***direct system*** that then prevailed has been described as follows:

> Before, members of the Board were directly elected by the members of the House of Delegates at its annual convention held every other year. The election was a two-tiered process. First, the Delegates from each region chose by secret plurality vote, not less than two nor more than five nominees for the position of Governor for their Region. The names of all the nominees, arranged by region and in alphabetical order, were written on the board within the full view of the House, unless complete mimeographed copies of the lists were distributed to all the Delegates. Thereafter, each Delegate, or, in his absence, his alternate voted for only one nominee for Governor for each Region. The nominee from every Region receiving the highest number of votes was declared and certified elected by the Chairman.[17] (citations omitted)

The Governors elected as described above constituted the House of Delegates that directly elected the National President and Vice President.

c.ii. Bar Matter No. 491

The direct election system was changed after the **1989 IBP national election** that was marred by ***massive irregularities***. The matter was brought to this Court and was docketed as **Bar Matter No. 491** which the Court resolved on October 6, 1989. The ruling, made pursuant to the Court's *constitutional supervisory authority* over the IBP, introduced sweeping electoral reforms in the election of the IBP national officers.

Under this ruling, the Court:

(1) ***annulled*** the results of the 1989 national elections because of the massive irregularities;

(2) ***abolished*** the direct election of national officers by the House of Delegates;

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[16] See *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines,* Bar Matter No. 491, October 6, 1989, 178 SCRA 398.

[17] *Garcia v. De Vera,* A.C. No. 6052, December 11, 2003, 418 SCRA 27, 43-44.

(3) ***restored the former system of having the IBP President and the EVP elected by the BOG from among themselves,*** as well as the ***right of automatic succession by the EVP to the Presidency*** upon the expiration of the IBP President's two-year term; and

(4) ***reinstated the rotational rule***.[18]

c.iii. The Rotation System

The Court explained in *Garcia v. De Vera*[19] the **rationale for the rotational rule**, as follows:

> The changes adopted by the Court simplified the election process and thus made it less controversial. The grounds for disqualification were reduced, if not totally eradicated, for the pool from which the Delegates may choose their nominees is diminished as the rotation process operates.
>
> The simplification of the process was in line with this Court's vision of an **Integrated Bar which is *non-political*** and effective in the discharge of its role in elevating the standards of the legal profession, improving the administration of justice and contributing to the growth and progress of the Philippine society. [emphasis, italics and underscore ours]

Another Court ruling put it more bluntly and succinctly: the rotational rule was primarily instituted "in order to give all the regions and chapters their respective turns, each for a term of two years, to have a representative in the top positions, with the **aim** of *restoring the* ***non-political character*** *of the IBP and* ***reducing the temptation of electioneering*** *for the said posts.*"[20]

The Court made the rotational rule *under Bar Matter No. 491* operational under the following terms:

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[18] *Ibid.*

[19] *Id.* at 44-45.

[20] *In Re: Compliance of IBP Chapters with Adm. Order No. 16-2007, Letter-Compliance of Atty. Ramon Edison C. Batacan,* A.M. No. 07-3-13-SC, February 27, 2008, 547 SCRA 1, 7-8; emphases, underscore and italics ours.

4. At the end of the President's two-year term, the Executive Vice-President shall automatically succeed to the office of President. The incoming Board of Governors shall then elect an Executive Vice-President from among themselves. The position of Executive Vice-President shall be rotated among the nine (9) IBP regions. One who has served as President may not run for election as Executive Vice-President in a succeeding election until after the rotation of the presidency among the nine (9) regions shall have been completed; whereupon, the rotation shall begin anew.[21]

In other words, while it was the Presidency that was *expressly* rotated, the rotation was made operational in the election of the EVP because of the rule on automatic succession,

To reflect the reinstatement of the rotational system and the other desired responses to the 1989 election irregularities, the Court under Bar Matter No. 491 ordered the ***amendment of Section 47, Article VII of the IBP By-Laws*** so that it read as quoted above. As an interim measure, the Court also designated an interim caretaker board[22] that conducted the special elections for the Governors of the nine (9) regions.

c.iv. The Operation of the Rotational System

As envisioned, the elected Governors for the 1989-1991 term chose the IBP President and the EVP among themselves and thus ***started the implementation of the presidential rotational system.*** The members of the 1989-1991 BOG and their represented regions were:

Table No. 1

Elected Governors	Region
Conrado V. Posadas	Northern Luzon
Numeriano G. Tanopo, Jr.	**Central Luzon**
Yolanda Q. Javellana	Greater Manila

[21] *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines, supra* note 17, at 198.

[22] Justice Felix A. Antonio was designated as Interim Caretaker and he served as such from October 19, 1989 to January 27, 1990.

Francisco B. Santiago	Southern Luzon
Mariano M. Sibulo	Bicolandia
Benedicto H. Alo	Eastern Visayas
Eugene A. Tan	**Western Visayas**
Elias B. Lopez	Eastern Mindanao
Macabangkit B. Lanto	Western Mindanao

The Board elected from among themselves on January 28, 1990 Eugene A. Tan of Capiz, ***Western Visayas, as IBP President,*** and Numeriano G. Tanopo, Jr. of Pangasinan, ***Central Luzon as EVP***. The official records of the IBP indicate that Atty. Tan served as IBP President only from January 28, 1990 to April 1991.[23] Atty. Tanopo succeeded Atty. Tan, initially as Acting President from the latter's remaining April to June 1991 term, and subsequently as President in his own right from 1991-1993 as the 2nd IBP President in the presidential rotational system.

In these lights, ***the rotational cycle should be counted from the time of Bar Matter No. 491, when the Court provided for the rotational system and the rule on automatic succession, and called for the election of the IBP President and EVP for the 1989-1991 term***. This term constituted the **first "turn" in the cycle**. Part of this term, of course, was under a caretaker, as a preliminary and preparatory measure under the developments that spawned Bar Matter No. 491.

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[23] Atty. Eugene Tan **resigned** as IBP President as a result of charges of favoritism or discrimination in the hiring of officers and employees in the IBP and extravagant and irregular expenditure of IBP funds filed by several staff members of the IBP via a letter-complaint with the Chief Justice. In Bar Matter No. 565, dated October 15, 1991, the Court found the actuations of Atty. Tan as constituting grave abuse of authority and serious misconduct in office which would have warranted his removal from office, but in view of the fact that he had earlier tendered his resignation as IBP President and his term of office already expired on June 30, 1991, the Court imposed upon him the penalty of severe censure. See *Villaruel v. Grapilon,* Adm. Case No. 4826, January 27, 1999, 302 SCRA 138, 158-159.

Table No. 2[24]

IBP Term	President	Executive Vice President
1989-1991	**1. Eugene A. Tan Western Visayas** a. Justice Felix Antonio served as Interim Caretaker (Oct. 19, 1989-Jan. 27, 1990) b. Pres. Tan resigned in April 1991 c. EVP Tanopo served as Acting President from April 1991-June 30, 1991	**1. Numeriano G. Tanopo, Jr. Central Luzon**
1991-1993	**2. Numeriano G. Tanopo. Jr. Central Luzon** a. July 1, 1991-June 30, 1993	**2.MervinEncanto Greater Manila Area** a. July 1, 1991-June 30, 1993
1993-1995	**3. Mervin Encanto Greater Manila Area** a. July 1, 1993-June 30, 1995	**3.Raul R. Angangco Southern Luzon** a. July 1, 1993 June 30, 1995
1995-1997	**4. Raul R. Angangco Southern Luzon** a. July 1, 1995-June 30, 1997	**4. Jose Aguila Grapilon Eastern Visayas** a. July 1, 1995-June 30, 1997
1997-1999	**5. Jose Aguila Grapilon Eastern Visayas** a. July 1, 1997-June 30, 1999	**5. Arthur Lim Western Mindanao** a. July 1, 1997-June 30, 1999

[24] ***Term with controversy.***

2001-2003	**6. Arthur Lim Western Mindanao** a. July 1, 1999-June 30, 2001	**6.Teopilo Pilanto, Jr. Northern Luzon** a. July 1, 1999-June 30, 2001
2003-2005	**7. Teopilo Pilanto, Jr. Northern Luzon** a. July 1, 2001-June 30, 2003	**7. Jose Anselmo Cadiz Bicolandia** a. July 1, 2001-June 30, 2003
2005-2007	**8. Jose Anselmo Cadiz Bicolandia** a. July 1, 2003-June 30, 2005	**8.** ***Leonard de Vera Eastern Mindanao a. July 1, 2003-removed from office on May 13, 2005 as Governor and EVP. b. Replaced by Jose Vicente Salazar (Bicolandia) for the rest of the term.***
	9.Jose Vicente Salazar BicolandiaAugust 2006-June 30, 2007 a. Jose A. Cadiz initially served as Holdover President while case was pending (July 1, 2005-Aug. 2006) b. Assumed office in August 2006 up to June 30, 2007	**9.Feliciano Bautista Central Luzon** a. July 1, 2005-June 30, 2007
	10. Feliciano Bautista Central Luzon a. July 1, 2007-June 30, 2009	**10.***Rogelio Vinluan Southern Luzon a. July 1, 2007-June 30, 2009*

		b. Committed election irregularity in April 2009 but still served out his term as EVP c. In the Court's ruling of Dec. 14, 2010,was declared unfit to assume the Presidency for the 2009-2011 term.
2009-2011	**11. Justice Santiago Kapunan Caretaker** a. served out the whole 2009-2011 term	**11. Roan Libarios Eastern Mindanao** a. July 1, 2009- June 30, 2011
2011-2013	**12.Roan Libarios Eastern Mindanao** a. July 1, 2011- Present	**12. *Vacant - Still Disputed***

For easy consideration of how the Bar Matter No. 491 changes actually operated, the tabulation below shows the IBP election developments from the 1989-1991 term up to the present:

d. <u>The Seeds of Confusion</u>

d.i. The <u>First Seed of Confusion</u>: The De Vera EVP Term

Counting from the Presidency of Atty. Tan of IBP-Western Visayas, the presidential rotation followed the following pattern and succession:

1. Western Visayas – Eugene Tan, 1989-1991
2. Central Luzon – Numeriano Tanopo, Jr., 1991-1993
3. Greater Manila – Mervin Encanto, 1993-1995
4. Southern Luzon – Raul Angangco, 1995-1997

5. Eastern Visayas – Jose Grapilon, 1997-1999
6. Western Mindanao – Arthur Lim, 1999-2001
7. Northern Luzon – Teofilo Pilanto, Jr., 2001-2003
8. Bicolandia – J. Anselmo Cadiz, 2003-2005

leaving only one region – Eastern Mindanao – without any IBP President from among the nine (9) regions; its ***turn as IBP President in the 2005-2007 term*** would have completed the rotation that Bar Matter No. 491 ushered in. The failure to complete the rotation was not due to any defect in the system, however, as Atty. Leonard De Vera was in fact elected the EVP for Eastern Mindanao for the IBP 2003-2005 term and *would have been IBP President for the 2005-2007 term, had he not been removed as Governor and EVP very shortly before his term as EVP ended.*

In *Velez v. Atty. De Vera*,[25] the Court dealt with the issue of whether the replacement of Atty. De Vera as EVP should come from Eastern Mindanao to preserve the rotation rule under Section 47, Article VII, of the IBP By-Laws. The Court replied in the negative and held that *the rotation rule had been completed despite the non-assumption of Atty. De Vera to the IBP Presidency.* The ruling held that:

In Bar Matter 491, it is clear that it is the position of IBP EVP which is actually rotated among the nine Regional Governors. The rotation with respect to the Presidency is merely a result of the automatic succession rule of the IBP EVP to the Presidency. Thus, the rotation rule pertains in particular to the position of IBP EVP, while the automatic succession rule pertains to the Presidency. The rotation with respect to the Presidency is but a consequence of the automatic succession rule provided in Section 47 of the IBP By-Laws.

In the case at bar, the rotation rule was duly complied with since upon the election of Atty. De Vera as IBP EVP, each of the nine IBP regions had already produced an EVP and, thus, the rotation was completed. It is only unfortunate that the supervening event of Atty. de Vera's removal as IBP Governor and EVP rendered it impossible for him to assume the IBP Presidency. The fact remains, however, that

[25] *Supra* note 16.

the rotation rule had been completed despite the non-assumption by Atty. de Vera to the IBP Presidency. [26] (emphases ours)

By this ruling, the Court itself appear to have planted **the first seed of confusion** *by separately considering the rotation system and the matter of presidential succession, thereby disregarding the express wordings of the IBP By-laws.*

How and why Atty. De Vera was removed from the position of EVP is an interesting tale that should be told in order to fully appreciate the Court's ruling.

In the 20th regular meeting of the BOG held on May 13, 2005 at the Waterfront Hotel in Cebu City, the BOG, by a 2/3 vote, resolved to remove Atty. De Vera as member of the BOG and as EVP under a Resolution that mainly cites *"the untruthful statements, innuendos and blatant lies in public about the Supreme Court and members of the IBP Board of Governors"* that Atty. De Vera uttered during the plenary session of the IBP 10th National Convention in relation to the decision of the BOG to withdraw the petition docketed as "*Integrated Bar of the Philippines, Jose Anselmo Cadiz, et al. v. The Senate of the Philippines, et al.*, SC-GR 165108." These acts were also cited as bases for the disbarment proceedings against Atty. De Vera.[27]

In EVP De Vera's stead, the BOG installed IBP Governor Pura Angelica Y. Santiago (of Southern Luzon) as EVP. Atty. De Vera immediately protested the election of Atty. Santiago who responded by voluntarily relinquishing her EVP position through a letter to the BOG.

On June 25, 2005, the BOG elected IBP Governor Salazar of Bicolandia as the new EVP to replace Atty. Santiago.[28] With the election of Atty. Salazar of Bicolandia, *Eastern Mindanao effectively lost its chance to claim the IBP Presidency by*

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[26] *Id.* at 811.

[27] *Id.* at 775-776.

[28] *Id.* at 779.

succession in the 2005-2007 term. **In this manner the system of rotation and succession then in place was derailed**.

d.ii. The <u>Second Seed of Confusion</u>: The Cadiz & Salazar Presidencies

In the subsequent 2005-2007 IBP term (that should have been Eastern Mindanao's turn in the Presidency), EVP Salazar did not immediately assume the post of IBP President (in light of the legal controversy that attended his assumption as EVP), and Atty. Jose Anselmo Cadiz served as holdover President until a new President was chosen and qualified.

The elected ***EVP for the 2005-2007 term – Atty. Feliciano Bautista of Central Luzon (who should have been the EVP of an Eastern Mindanao President)*** – protested this arrangement, leading the Court to rule in *A.M. No. 05-7-19-SC* in favor of Atty. Cadiz as *interim holdover President*. The Court cited Section 49 of the IBP By-Laws that the outgoing IBP President shall continue to hold office until his successor is chosen and qualified. At the same time, the Court ordered the elected EVP for the term to cease exercising the powers and functions of the Acting IBP President.

In *Velez v. Atty. De Vera*,[29] the Court confirmed Atty. Salazar's election by the BOG as EVP for the remainder of Atty. De Vera's 2003-2005 term. As a consequence, Atty. Salazar of the Bicolandia Region succeeded to the Presidency for the 2005–2007 IBP term (August 2006 to June 30, 2007) ***– the term that should have been Eastern Mindanao's under the prevailing systems of rotation and succession, had De Vera continued in his 2003-2005 EVP post and succeeded to the Presidency in the 2005-2007 term.***

The Court's *Velez* conclusion was apparently not a very precise one; despite the disruption of the rotational system by Atty. De Vera's removal as EVP and his consequent failure to succeed to the IBP Presidency, the Court still concluded that with the election of Atty. De Vera as EVP, each of the

[29] *Supra* note 16.

nine (9) regions had already produced an EVP so that the rotational cycle had been completed.

This conclusion based its consideration *from the prism of the EVP* and in this sense ran counter to the express terms of Section 47, as amended by Bar Matter No. 491. It could have only been correct if it proceeded from the *implied premise* that with the election of Atty. De Vera to the EVP post in the 2003-2005 term, the 2005-2007 Presidency could have been Eastern Mindanao's as Atty. De Vera should have succeeded to this post had it not been for his removal from office. Based on this line of reasoning, the Court would still have impliedly counted the rotation from the prism of the Presidency.

Another implied premise in the Court's conclusion was the counting of the rotational cycle from the Presidency of Atty. Eugene Tan in the 1989-1991 IBP term. While the basis for the count was correct, the Court did not express its reason in the manner demanded by *the wording of the IBP By-laws, as amended by Bar Matter No. 491*. The Court – apparently looking at the *operational side of the rotation and not at the requirements of Bar Matter No. 491amendement* – expressed its conclusion in terms of the completion of the rotational cycle with the election of Atty. De Vera *as EVP*.

The *Velez* seed of confusion further grew when the Court, while recognizing the completeness of the rotational cycle with the election of Atty. De Vera *as EVP in 2003-2005*, did not expressly declare that a *new rotational cycle for EVP* started under the 2005-2007 term of President Salazar. This declaration, had one been made, would have effectively recognized that a *new presidential rotation* was to take place by succession starting from the 2007-2009 term.

With *Velez* as the basic premise and take off point, ***the choice for the EVP for the 2005-2007 IBP term should have been open to all regions to usher in a new round of presidential rotation in the 2007-2009 IBP term.*** This was the term of Atty. Feliciano Bautista as the 2005-2007 EVP, making him the first EVP in the 2nd rotational cycle *from the prism of the EVP post*, and, by succession, the first President in the *2nd*

presidential rotational cycle in 2007-2009 IBP presidential term.

d.iii. Further Seeds of Confusion: The Ghosts of 1989 in 2009

Under Atty. Bautista of Central Luzon's Presidency in the 2007–2009 IBP term, Atty. Rogelio Vinluan of Southern Luzon was elected as EVP without any accompanying controversy. In the regular course, EVP Vinluan would have assumed the presidency for the 2009–2011 term, but another election controversy intervened immediately before the end of the Bautista Presidency, *i.e.*, immediately before EVP Vinluan succeeded as President.

In the election of 2009 (held on April 25, 2009), six members of the BOG were proclaimed without any question. They were: Atty. Ma. Milagros N. Fernan-Cayosa (Northern Luzon); Atty. Ferdinand Y. Miclat (Central Luzon); Atty. Amador Tolentino, Jr. (Southern Luzon); Atty. Jose V. Cabrera (Bicolandia); Atty. Roland B. Inting (Eastern Visayas) and Atty. Roan Y. Libarios (Eastern Mindanao).[30]

The results of the election of the other Governors, namely: Attys. Manuel M. Maramba of Greater Manila, Erwin M. Fortunato of Western Visayas, and Nasser A. Marohomsalic of Western Mindanao, were held in abeyance because of the **controversy that attended the Greater Manila election for Governor.**

In resolving this controversy at the BOG level, certain officials in the 2007-2009 term (who were still in office prior to the turnover to the officials for the incoming 2009–2011 term) acted on their own by holding *a special meeting presided over by EVP Vinluan*, in defiance of the authority of 2007-2009 IBP President Bautista. In this special meeting, they proclaimed Atty. Elpidio Soriano as the Governor for Greater Manila.[31] This move was contested and came to this Court under the

[30] *Supra* note 2, at 24-25.

[31] *Ibid.*

present Administrative Matter – *Magsino, et al. v. Vinluan, et al.*, A.C. No. 8292 and A.M. No. 09-5-2-SC.[32]

In its **Resolution of December 14, 2010,** the Court, among others, confirmed the election of Governors Maramba, Fortunato and Marohomsalic; called for a special election for the position of EVP for the 2009-2011 term; found 2007-2009 officials EVP Vinluan, and Governors Abelardo Estrada, Bonifacio Barandon, Evergisto Escalon, and Raymund Mercado guilty of grave professional misconduct, and disqualified them from holding any IBP position in any future election; and declared EVP Vinluan unfit to hold his position and unqualified to assume the office of IBP President for the 2009-2011 term. The Court likewise designated retired Supreme Court Justice Santiago Kapunan as Office-in-Charge of the IBP until June 30, 2011.[33] The Court decreed as well the further amendment of Section 47, Article VII of the IBP By-Laws, quoted above.

d.iv. The 2009-2011 Caretaker Term: The Ailing IBP

The 2009-2011 can be described as ailing, not because of the caretaker or Officer-in-Charge, retired SC Justice Santiago Kapunan, but because of the unusual character of that term.

The term of the regular President for the 2009-2011 term should have started on July 1, 2009, but there was no President in place at that time. Neither was there any Executive Vice President as none had been elected in light of the incomplete composition of the BOG that resulted from the 2009 election controversy. The ruling of the Court on the controversy was not also immediately forthcoming. It was not until December 14, 2010 or seventeen (17) months of the 24-month term that the Court resolution came.

In the special election for the position of EVP for the 2009-2011 term, Atty. Roan Libarios of Eastern Mindanao was elected. His election came a short six (6) months before the end of the

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[32] *Ibid.*

[33] *Id.* at 38-39.

2009-2011 term so that he was only effectively there to be President for the 2011-2013 term. Not to be forgotten at this juncture is that the Court also further amended Section 47, Article VII of the IBP By-Laws.

This was effectively the situation under which EVP Libarios took over as President on July 1, 2011. The IBP was not dead as the resurrected Lazarus of biblical fame had been, but it was an ailing organization that continued to be bedeviled by earlier-planted seeds of confusion.

d.v. The Libarios 2011-2013 Term: Incomplete Normalcy

The Libarios presidency was a period generally characterized by a return to normalcy, except for the lingering uncertainty that the Western Visayas regional governorship controversy brought with it. The Western Visayas regional election, supposed to be held on May 7, 2011, was the subject of a Temporary Restraining Order from the Court and no election was held on that day.

This is the problem that was first mentioned in the opening of this Separate Opinion as the controversy that ushered in the rotational issue, albeit at the local level and one that had since been resolved. On the heels of this resolved regional problem came the present national rotational issue on who can run for the EVP position for the 2011-2013 term.

SOLUTIONS AND CONCLUSIONS

At this point, a completely legalistic solution may leap out of the recital of the laws involved and the attendant factual developments. The problem before the Court, however, is not a controversy that a completely legalistic approach would fully resolve. It does not involve the usual exercise of adjudicative power over justiciable controversies; it is not a dispute where the Court stands as a third party to the problem, *i.e.*, a third party whom the disputing parties approached for an authoritative ruling and who would then leave the parties to themselves after it renders a ruling.

The Court's rule in the present controversy is closer to that of a direct participant than to that of an impartial third party judge or arbitrator. In a very real sense, it is a participant as it cannot choose to dissociate or distance itself from the problem, from the solutions, and from the consequences of the actions it has taken or will take on IBP matters.

The IBP is a mandatory association of Philippine lawyers and all Members of the Court, as a requirement of the Constitution and of the judicial positions they hold, are members of the IBP. The same Philippine Constitution also imposes direct duties on the Court; it exercises mandatory regulatory and supervisory powers over the IBP as well as over all the members of the organization. These are not simply powers but duties on the part of the Court. Pursuant to this power and duty, the Court has acted on the IBP By-laws and the regulation of its activities, in fact, over the same problems that spawned the present controversy; in fact, the Court may have had its own lapses in resolving these problems.

From these perspectives, the resolution of the present controversy is not simply a matter of direct application or interpretation of the laws or of the rules utilizing legal as norms, principles and rules of procedures. The present controversy requires, more than anything else, the use of *foresight, wisdom, lessons learned from experience and history, a good feel for the objectives and purposes of the IBP, and to a large extent, a sense of mission for the organization and for the nation that the IBP and all its members are sworn to serve.*

For these reasons, the various aspects of the present controversy ought to be examined closely without omitting or glossing over any matter offered as a solution. It is in this spirit that the various options and even the positions taken by the Dissent are examined below.

A. *The First Option* – *to Adopt and Apply the Velez ruling.*

The first region to avail of its turn under the Bar Matter No. 491 rotational cycle, as shown by Table 2 above, was **Western Visayas** with the election of Atty. Tan as President and Atty.

Tanopo of Central Luzon as EVP. This starting point is as a ***given,*** having been the first election decreed under Bar Matter No. 491 without any expressed qualification or terms of limitation. Specifically, the Tan Presidency was never, impliedly or expressly, considered a temporary or a transitional term under Bar Matter No. 491. It was simply the starting point of the presidential rotation that Bar Matter No. 491 established and should likewise be considered as the starting point for consideration in resolving the various aspects of the present controversy.

Under this premise, the first full round of rotation should have been completed with the Presidency of Eastern Mindanao in the 2005-2007 term, ushered in, under the rules on succession, by the election of Atty. De Vera of Eastern Mindanao as EVP for the 2003-2005 term. Both the rules on succession and rotation would then have been totally satisfied under the original terms of Section 47, Article VII of the By-laws, as amended by Bar Matter No. 491.

The *Velez* ruling, unfortunately, only declared the rule on rotation completed and satisfied upon Atty. De Vera's *election as EVP* and omitted to state that it would have effectively ushered in Eastern Mindanao's Presidency through succession in the following 2005-2007 term. Recall on this point that the original By-laws expressly required that it was the Presidency, not the EVP position that had to be rotated so that there was effectively a three-stage process leading to the rotation. First, there is the election of the EVP, then his or her succession, and finally, the assumption to the presidency and rotation. *Velez* only provided for the first stage and in this sense, was incomplete in its terms and explanation.

The incompleteness, however, does not necessarily lead to the invalidity of the *Velez* ruling as it was still partially correct, *i.e.*, if the ruling would be understood in the sense that the 2005-2007 Presidency would have been an Eastern Mindanao turn that simply did not happen because of the removal of the duly elected EVP for Eastern Mindanao in the previous 2003-2005 term. In other words, the De Vera election as EVP was

a reality that could not be erased but was not only carried to completion.

From this perspective, the **EVP for the 2005-2007** term (*i.e.*, the EVP who served under what would have been an Eastern Mindanao Presidency) can still be recognized as the Vice Presidency that ushered in the new presidential rotation that would have been served in the 2007-2009 term. This 2005-2007 EVP and 2007-2009 President was Atty. Feliciano Bautista. Under this view, ***the 2005-2007 EVP election should have been open to all regions as it was the EVP post that would have ushered in a new presidential rotation in the 2007-2009 IBP term.***

With the Bautista election as EVP in the 2005-2007 term and his Presidency in 2007-2009 as the starting points, the **IBP-Western Visayas' position** that it should automatically get the 2011-2013 EVP post clearly **fails.**

It must necessarily fail as – *starting from* ***Atty. Bautista of Central Luzon in 2005-2007*** – only two other EVPs have been elected, namely: ***Atty. Vinluan of Southern Luzon*** (who would have been disqualified as EVP were it not for the completion of his term as such, and who was declared unfit to assume the Presidency in the 2009-2011 term) and ***Atty. Libarios of Eastern Mindanao*** for the 2009-2011 term.

The **South Luzon position** that the 2011-2013 should be open to all regions similarly fails. With Eastern Mindanao excluded because it cannot serve successive presidencies (*i.e.*, 2011-13 and 2013-15), ***all regions other than Central Luzon, Southern Luzon and Eastern Mindanao, can compete for the 2011-2013 EVP post.*** This is far from the completely open election that South Luzon advocates. Likewise, the EVP post should still be open to six other regions, not only to Western Visayas.

Thus, both the Western Visayas and South Luzon positions must fail if a properly viewed and understood Velez ruling would be followed. To this extent, I concur with the *ponencia* of Justice Mendoza.

I draw a limit however to the disposition of the present Administrative Matter based on *Velez* ruling even if this ruling is viewed and understood as discussed above. The simple reason for this position is that a *Velez*-based disposition is not the best ruling that this Court can make because of the gaps and the seeds of confusion that *Velez* generated. These seeds can only germinate and sow the wind with further confusion if adopted by this Court. In other words, a disposition based on *Velez* is far from the *wise*, *reasonable* and *sober* ruling that the Court's relationship with the IBP and its duties under the Constitution demand.

B. *The Second Option* – *Open the 2011-2013 EVP Election Open to All Regions by Considering the Present Term of Eastern Mindanao as the Completion of the Rotation that Started in the 1989-1991 Term.*

Despite the amendment of Section 47, Article VII of the IBP By-Laws on December 14, 2010 mandating a rotation rule viewed *from the prism of the EVP*, the Court cannot ignore the reality that prior to the present amendment (*i.e.*, from 1989-1991 term until December 2010), the **prevailing rule** *was the rotation of the Presidency among the regions*, *i.e.*, the rotational rule must be considered from the prism of the Presidency and not of the Vice-Presidency.

This previous rule on rotation stood firm until its amendment only on December 14, 2010 - way into Atty. Libarios' EVP term or only six months before his EVP term ended on June 30, 2011.

Note in this regard that *prior to the present amendment*, the first rotational cycle would have been completed in the 2005-2007 term with the Presidency of Eastern Mindanao but no Eastern Mindanao Presidency actually came to pass. Note, too, that separately from the rule on presidential rotation, the By-Laws also provided for succession; the presidential rotation was carried out through the succession of the previous term's EVP to the Presidency.

Since Eastern Mindanao had not had its "turn" at the IBP Presidency (as the succession of its EVP did not take place) until the term of Atty. Libarios as President , the **second option open to the Court** is to consider the first cycle of presidential rotation completed only by the current Presidency of Atty. Libarios. This option proceeds ***from the following premises***:

(1) Bar Matter No. 491 lays down the starting point of the IBP's system of rotation *from the prism of the Presidency* under an arrangement that calls for the succession of the EVP to the Presidency; and

(2) these rules on rotation and succession prevailed until the amendment of Section 47, Article VII of the IBP By-Laws on December 14, 2010, decreeing the rotation of the EVP position but without any express reference to the rule on succession;

(3) the recent amendment of Section 47, Article VII of the IBP By-Laws should be interpreted prospectively so that it would take effect from the 2011-2013 term – the first turn in the EVP rotation; and

(4) the Court would further amend the By-Laws to restore the automatic succession of the EVP to the post of President effective 2011-2013.

This option means that both the Presidency of Bicolandia (IBP President Salazar) and the subsequent term of Central Luzon (IBP President Bautista) should be considered by this Court – if it were to really uphold fairness, the principles of Bar Matter No. 491, and the then prevailing terms of Section 47, Article VII of the IBP By-Laws – to be ***aberrant developments for purposes of the system of succession and rotation*** as they sidetracked what should have been these systems' smooth and proper implementation.

To be sure, these intervening presidencies can possibly be justified – ***from the non-rotational and practical perspectives*** – by the qualifier *"as far as practicable"* pointed out above; this interpretation is, in fact, the only justification available to support the Court's actions in the election of Salazar as EVP and his succession to the Presidency in 2005-2007 term.

The consequence though that cannot be denied under this view is that ***the 2011–2013 term of IBP President Libarios of Eastern Mindanao is that region's only "turn" at the Presidency and is thus the only turn that effectively completes the 1st presidential rotational cycle that started with IBP President Tan in the 1989 –1991 term under Bar Matter No. 491.*** No rotation can simply be complete unless all the regions have taken their "turns" at the Presidency – the position that matters under the terms of Section 47, Article VII of the IBP By-Laws prior to 2010.

Thus, while the Bicolandia 2005-2007 and Central Luzon 2007-2009 terms in the Presidency may find justification, for practical purposes, under the cover of the above qualifier, they remain ***aberrant terms*** because of their effects on the system of succession and rotation, and ***should be simply disregarded for purposes of the rotational rule***. Of course, these regions were not in any way at fault; they simply followed the then current Supreme Court rulings. But at this later point, when we already act with the benefit of experience and hindsight, ***in a balancing test*** between the start of a new rotation cycle under the Bicolandia 2005-2007 presidency and a new beginning ***after*** the 2011–2013 Eastern Mindanao Presidency, the balance should tilt in favor of the latter after considering:

- the wording of the IBP By-Laws prior to their amendment in 2010;
- the nature and character of the irregularities, distortions and uncertainties that the rotation system seeks to address;
- the long term effects of a Court ruling giving primacy to the strict application to the rotation rule (already signaled by the Court's December 14, 2010 ruling in the present Administrative Matter);
- the fairness that this Court accords to Eastern Mindanao by its recognition of the turn of this Region in the IBP's first rotational cycle; and
- the opportunity for a very smooth and seamless transition in the implementation of the newly amended Section 47; the Court is now offered the unique opportunity of implementing

> the amended Section 47 without the need for any disruptive transitional measures since the 2011-2013 EVP position is vacant.

With the terms of Attys. Salazar and Bautista disregarded *for purposes of the rotational rule*, President Libarios effectively becomes the 9th President whose term completes one full presidential rotation, where each region had been given a "turn" at the Presidency. Thus, Bar Matter No. 491 – valid and effective up to December 14, 2010 – has been completely complied with.

B.1. A New Beginning under the Second Option.

To ***start the next cycle of rotation*** from the **prism this time of the EVP position and to do this prospectively**, the rotation must start from the 2011-2013 term – the term immediately following the December 14, 2010 amendment, whose EVP still needs to be elected. Automatic succession to the Presidency will likewise start but this will have to actually take place in the 2013-2015 term as succession speaks of a future event reckoned from the effectivity of the EVP rotation in 2011-2013.

Thus, the choice of EVP who would serve with President Libarios in the 2011-2013 term should be open to all regions, except only for Eastern Mindanao which cannot serve as President for two (2) consecutive terms. This is the unique opportunity that is open to the Court as the present 2011-2013 EVP position is vacant. Notably, no region would be prejudiced as all regions have at this point served their respective turns in the Presidency.

To sum up the discussions above, the completion of one rotation through the "turn" of the 9th region to the Presidency, and the start of a new system of rotation through the EVP rotation, mean that:

- *The 2011-2013 Presidency of President Libarios will end the rotation of Presidency as decreed under Bar Matter No. 491.*

- ***The 2011–2013 term will signal and count as the start of the new rule on strict rotation of the EVP position; this will be the first turn in the EVP rotation.***
- Elections can be held without need of any special transitory measures as the ***post of EVP for the 2011-2013 term remains vacant***.
- ***The 2011–2013 EVP should be chosen at large among the remaining eight regions*** *(i.e., excluding the region of the 9th President since this will be the first turn for the EVP position and since the Presidency should not come in succession from the same region).*
- ***The 2011–2013 EVP will automatically succeed to the position of President for the 2013–2015 term (effectively the start of a new turn from the prism of the Presidency); the Court though still needs to put an automatic succession provision in place after its deletion under the December 14, 2010 amendment.***

This conclusion is fully in accord with the conclusion of Justice Jose Catral Mendoza, based on his parallel reasoning on the matter. I submit that this is the most **sound, fair, reasonable and practical** conclusion under the circumstances.

To reiterate, it is fully **in accord with and fully respects the rotation and succession systems** that Bar Matter No. 491 dictated, while at the same time **seamlessly blending the old rule with the new terms of Section 47**, **Article VII of the IBP By-Laws, as amended**.

Most importantly, this option essentially fosters a **fair** result as it has respected the right of all IBP regions to serve the EVP and the Presidency, and at the same time gives the IBP a **fresh start** at another round of rotation with clearer terms. More than all these, by its insistence on the rule of rotation and that all regions should serve their "turns," it signals **the Court's strong commitment to the rotational rule**.

C. Refutation of Justice Velasco's Dissent

The Dissent essentially posits that Western Visayas should automatically be entitled to the 2011-2013 EVP position as the

only region that has not served as EVP – a conclusion that no less than this Court has recognized in its December 14, 2010 Resolution. It defends this position through the invocation of technical arguments, particularly, the immutability of the Court's judgment, estoppel, the impropriety of South Luzon's intervention, and finally, the correctness in computing the 1st round of presidential rotation.

The Dissent particularly emphasizes that intervenor IBP-Southern Luzon seeks to re-open and set aside the Court's December 14, 2010 Resolution that had long attained finality and immutability and that has been partially executed with the election of Atty. Libarios as EVP for the 2009-2011 term. It maintains that there has been no decision or resolution in the Court's history that annulled its previous final decision which was not based on a motion for reconsideration filed within the fifteen-day period to appeal the decision; the cases of *Apo Fruits* and *Keppel* are not controlling since the parties therein filed their motions for reconsideration within the fifteen-day period.

The Dissent's concerns are more specifically outlined below.

First, it argues that the petition for intervention filed by IBP-Southern Luzon after the finality of the Court's December 14, 2010 Resolution violates Section 2, Rule 19 of the Rules of Court and settled jurisprudence on finality and immutability of judgments. It asserts that the December 14, 2010 Resolution became final and executory after the Court denied with finality the Motion for Reconsideration filed by Atty. Elpido G. Soriano on February 8, 2011. Thus, the Resolution is already immutable and unalterable and intervention is barred.

Second, the Dissent avers that the IBP-Southern Luzon and Governor Joyas are estopped from questioning the Court's December 14, 2010 Resolution considering that Governor Joyas waited for more than one (1) full year after assuming the IBP-Southern Luzon Governor position before attempting to reopen the final resolution of the Court.

Third, the Dissent contends that IBP-Southern Luzon and Governor Joyas have no legal interest in the subject matter of litigation or in the success of either of the parties, in violation of Section 1, Rule 19 of the Rules Court. It notes that under the factual circumstances of the present case, IBP-Southern Luzon can no longer compete for the EVP position as it has already had two elected EVPs in the current rotation; thus, neither IBP-Southern Luzon nor Governor Joyas has any legal interest in the subject matter of the present case.

Fourth, the Dissent maintains that the Court's December 14, 2010 Resolution has already settled the question of who among the regions are entitled to compete for the EVP position for the 2011-2013 term. The Court particularly decreed in its ruling that either the governor of Western Visayas or Eastern Mindanao should be elected as EVP for the 2009-2011 term; the one not chosen for this term shall have his turn in the 2011-2013 term. Considering that IBP-Eastern Mindanao became the 8th region to have successfully secured a seat as EVP for the 2009-2011 term (with Atty. Libarios' election as EVP in the 2009-2011 term and his assumption to the Presidency for the 2011-2013 term), the Dissent concludes that IBP-Western Visayas is the only remaining region left to compete for the EVP for the 2011-2013 term.

Fifth, the Dissent notes that for purposes of the rotation rule, the appropriate reckoning point for the start of the present rotation should be Atty. Tanopo's election as EVP and not Atty. Tan's election as President. It cites the Court's ruling in *Velez v. De Vera* where the Court held that the rule on rotation by exclusion particularly pertains to the position of EVP while the automatic succession rule pertains to the Presidency. Thus, it maintains that for the process to be complete, one must first be elected as EVP for the current term before he or she can serve as President for the next term; this process must be satisfied in strict sequence before a specific IBP region is deemed to have completed its turn to the IBP leadership. The Dissent also notes that Atty. Tan's term should not be counted against IBP Western Visayas for it would be unfair to consider his term of one year and three months (as a "transition

President") as equal to the supposed service of two years as EVP and another two years as President as mandated by Section 47, Article VII of the IBP-By Laws.

Finally, the Dissent emphasizes that under the rule of immutability of judgment, the Court is duty-bound to: (1) uphold its December 14, 2010 Resolution; (2) deny IBP-Southern Luzon's petition for intervention and declare IBP-Western Visayas as the only region qualified to file a candidate for EVP for the 2011-2013 term. It emphasizes that exceptions to the doctrine of immutability of judgments do not obtain in the present case. In addition, the Dissent notes that there are no intervening developments after the finality of the December 14, 2010 Resolution rendering its execution unjust and inequitable.

These arguments are addressed in the same order they are posed under the topical headings below.

The doctrine of immutability of judgments does not apply to the Court's exercise of supervisory powers over the IBP

The Dissent's preoccupation and invocation of the principle of immutability of judgment apparently blinded it to the true nature of the Court's December 14, 2010 Resolution that the Court issued pursuant to its constitutionally-mandated supervisory power over the IBP. Section 5, Article VIII of the Constitution mandates the Court's power of supervision over the IBP. This is the same power that the Court exercised in the issuance of the rules on the *Writ of Amparo,* the rules on the *Writ of Kalikasan*, and the Rules of Court, among others.

In *Garcia v. De Vera*,[34] the Court held that that implicit in the constitutional grant to the Supreme Court of the power to promulgate rules affecting the IBP (under Section 5, Article VIII of the Constitution) **is the power to supervise all the activities of the IBP, including the election of its officers.** In ruling that that it had jurisdiction over the election of officers

[34] *Supra* note 17.

of the IBP, the Court elaborated on the constitutional history and the extent of the Court's supervisory powers over the IBP, as follows:

The authority of the Supreme Court over the IBP has its origins in the 1935 Constitution. Section 13, Art. VIII thereof granted the Supreme Court the power to promulgate rules concerning the admission to the practice of law. It reads:

SECTION 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines.

The above-quoted sections in both the 1987 and 1935 Constitution and the similarly worded provision in the intervening 1973 Constitution through all the years have been the sources of this Courts authority to supervise individual members of the Bar. The term Bar refers to the collectivity of all persons whose names appear in the Roll of Attorneys. **Pursuant to this power of supervision, the Court initiated the integration of the Philippine Bar by creating on October 5, 1970 the Commission on Bar Integration**, which was tasked to ascertain the advisability of unifying the Philippine Bar. Not long after, Republic Act No. 6397 was enacted and it confirmed the power of the Supreme Court to effect the integration of the Philippine Bar. Finally, on January 1, 1973, in the *per curiam* Resolution of this Court captioned In the Matter of the Integration of the Bar to the Philippines, we ordained the Integration of the Philippine Bar in accordance with Rule 139-A, of the Rules of Court, which we promulgated pursuant to our rule-making power under the 1935 Constitution.

The IBP By-Laws, the document invoked by respondent De Vera in asserting IBP independence from the Supreme Court, ironically recognizes the full range of the power of supervision of the Supreme Court over the IBP. For one, Section 77 of the IBP By-Laws vests on the Court the power to amend, modify or repeal the IBP By-Laws,

either *motu propio* or upon recommendation of the Board of Governors of the IBP. Also in Section 15, the Court is authorized to send observers in IBP elections, whether local or national. Section 44 empowers the Court to have the final decision on the removal of the members of the Board of Governors.

On the basis of its power of supervision over the IBP, the Supreme Court looked into the irregularities which attended the 1989 elections of the IBP National Officers. In Bar Matter No. 491 entitled *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines* the Court formed a committee to make an inquiry into the 1989 elections. The results of the investigation showed that the elections were marred by irregularities, with the principal candidates for election committing acts in violation of Section 14 of the IBP By-Laws. The Court invalidated the elections and directed the conduct of special elections, as well as explicitly disqualified from running thereat the IBP members who were found involved in the irregularities in the elections, in order to impress upon the participants, in that electoral exercise the seriousness of the misconduct which attended it and the stern disapproval with which it is viewed by this Court, and to restore the non-political character of the IBP and reduce, if not entirely eliminate, expensive electioneering.

The Court likewise amended several provisions of the IBP By-Laws. First, it removed direct election by the House of Delegates of the (a) officers of the House of Delegates; (b) IBP President; and (c) Executive Vice-President (EVP). Second, it restored the former system of the IBP Board choosing the IBP President and the Executive Vice President (EVP) from among themselves on a rotation basis (Section 47 of the By-Laws, as amended) and the automatic succession by the EVP to the position of the President upon the expiration of their common two-year term. Third, it amended Sections 37 and 39 by providing that the Regional Governors shall be elected by the members of their respective House of Delegates and that the position of Regional Governor shall be rotated among the different chapters in the region.

The foregoing considerations demonstrate the power of the Supreme Court over the IBP and establish without doubt its jurisdiction to hear and decide the present controversy. [emphasis supplied]

Pursuant to this supervisory power, the Court created a Special Investigating Committee to look into the "brewing controversies

in the IBP elections, specifically in the elections of Vice President for the Greater Manila Region and Executive Vice President of the IBP itself and any other election controversy involving other chapters of the IBP, if any, including the election of the Governors for Western Mindanao and Western Visayas." [35] The investigation focused specifically on the following issues or controversies:

1. What is the correct interpretation of Section 31, Article V of the IBP By-Laws which provides:

"SEC. 31. **Membership.** – The membership (of Delegates) shall consist of all the Chapter Presidents and, in the case of Chapters entitled to more than one Delegate each, the Vice-Presidents of the Chapters and such additional Delegates as the Chapters are entitled to. Unless the Vice-President is already a Delegate, he shall be an alternate Delegate. Additional Delegates and alternates shall in proper cases be elected by the Board of Officers of the Chapter. Members of the Board of Governors who are not Delegates shall be members *ex officio* of the House, without the right to vote."

2. Who was validly elected Governor for the Greater Manila Region?

3. Who was validly elected Governor for Western Visayas Region?

4. Who was validly elected Governor for Western Mindanao Region?

5. Who was validly elected IBP Executive Vice President for the next term?

6. What is the liability, if any, of respondent Atty. Rogelio A. Vinluan under the administrative complaint for "grave professional misconduct, violation of attorney's oath, and acts inimical to the IBP" filed against him by Attys. Marcial Magsino, Manuel Maramba and Nasser Marohomsalic?[36]

On the basis of the findings of the Special Investigating Committee, the Court resolved the various controversies relating to the elections in the various chapters of the IBP; declared EVP Vinluan unfit to hold his position and unqualified to assume

[35] *Supra* note 2.

[36] *Ibid.*

the office of IBP President for the 2009-2011 term; designated retired Supreme Court Justice Santiago Kapunan as Officer-in-Charge of the IBP, and decreed the amendment of Sections 31, 33, par. (g), 39, 42 and 43, Article VI and Section 47, Article VII of the IBP By-Laws.

All these rulings and directives rested on the Court's supervisory authority and were made in the exercise of the Court's ***administrative*** rather than its judicial or adjudicatory functions, and were made in the exercise of its ***power of supervision, not on the basis of the power of judicial review***. The Dissent apparently did not consider that in the exercise of these supervisory powers, the Court's issuances **did not involve strictly judicial matters that become final and immutable under strict adjudication rules.**

In blunter terms, the Court's exercise of supervision is a continuing regulatory process; the rulings issued under this power are not cast in stone as the Dissent inaccurately portrays; these rulings remain open for review by the Court in light of prevailing circumstances as they develop.

An example of this ongoing regulatory supervision by the Court over the IBP is **Section 77 of the IBP-By Laws, which gives the Court the power to amend, modify or repeal the IBP By-laws, either *motu proprio* or upon the recommendation of the Board of Governors**, as the Court did in fact, in Bar Matter No. 491 and subsequently in its December 14, 2010 Resolution when it ordered the amendment of Sections 31, 33, par. (g), 39, 42 and 43, Article VI and Section 47, Article VII of the IBP By-Laws.

This continuing regulatory supervision by the Court over the IBP is also exemplified by the way the Court dealt with the series of "brewing controversies" that beset the IBP starting with: (1) the 1989 IBP elections in Bar Matter No. 491; (2) the effects of the abbreviated term of EVP De Vera in *Velez v. Atty. De Vera*, (3) the brewing election controversies in various chapters of the IBP as well as the elections for the EVP for the 2009-2011 term that resulted in the issuance of the December 14, 2010 Resolution; (4) the issues with respect to the election

of Governor for IBP-Western Visayas the outcome of which was the issuance of the Court's December 14, 2012 Resolution that clarified that the rotational rule was one by exclusion, and, finally, (5) the present Administrative Matter on the question of who is qualified to nominate a candidate for the position of EVP for the 2011-2013 term. Notably, the controversies starting from the 2009 IBP incidents have been subsumed under one consolidated A.M./A.C. docket number.

The dynamic character of the Court's power of supervision over the IBP is also evident from the manner the Court treats administrative matters brought before it.

An administrative matter (such as the one filed before the Court in A.M. No. 09-5-2-SC and A.C. No. 8292, subject matter of the December 14, 2010 Resolution) that is entered in the Court's docket is either an administrative case (A.C.) or an administrative matter (A.M.) submitted to the Court for its consideration and action pursuant to its power of supervision.[37]

An **administrative case (A.C.)** involves disciplinary and other actions over members of the Bar, based on the Court's supervision over them arising from the Supreme Court's authority to promulgate rules relating to the admission to the practice of law and its authority over the Integrated Bar. Closely related to A.C. cases are the **Bar Matter (*B.M.*)** cases particularly those involving admission to the practice of law.[38]

An **administrative matter (A.M.)** is a matter based on the Supreme Court's power of supervision: under Section 6, Article VIII of the Constitution (the Court's administrative supervision over all courts and the personnel thereof); under Section 8 (supervision over the JBC); and under Section 5(5) (supervision over the IBP). [39]

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[37] See: Separate Opinion of Associate Justice Arturo D. Brion in *De Castro v. Judicial And Bar Council*, G.R. Nos. 191002, 191032, 191057 and A.M. No. 10-2-5-SC, March 17, 2010, 615 SCRA 666.

[38] *Ibid.*

[39] *Id.*

In administrative matters concerning the IBP, the Court can supervise the IBP by ensuring the legality and correctness of the exercise of its powers as to means and manner, and by interpreting for it the constitutional provisions, laws and regulations affecting the means and manner of the exercise of its powers. The Court, of course, is the final arbiter in the interpretation of all these instruments. For this precise reason, the IBP By-laws reiterates that the Court has the plenary power to amend, modify or repeal the IBP By-laws in accordance with policies it deems, not only consistent with the Constitution, laws and regulations, but also as may be necessary, practicable and appropriate in light of prevailing circumstances.

It is in this sense that ***no entry of judgment is made*** with respect to administrative matters brought before the Court because special circumstances may affect or radically change the directives or policies the Court may decree or adopt. In concrete terms, the Court may change, suspend or repeal these directives or policies if its finds their application to be contrary to law or public policy or inappropriate under the prevailing circumstances.

That administrative matters before the Court are not subject to the doctrine of immutability of judgments also find emphasis in administrative matters involving violations of ethical standards (such as the Code of Professional Responsibility or Code of Judicial Conduct) which are reviewed by the Court years after the promulgation of the decision or resolution upon a petition for clemency by the respondent. In many instances, the Court changes its rulings upon proof that the petitioner has reformed or suffered enough on account of his or her unethical conduct.

In the recent case of *Talens-Dabo v. Judge Arceo*,[40] the Court lifted the penalty of disqualification from re-employment in government imposed on Judge Hermin E. Arceo (imposed on him in the Court's Decision of July 25, 1996 finding him guilty of gross misconduct and immorality). The Court so acted after Atty. Arceo demonstrated that he has "sufficiently shown

[40] A.M. No. RTJ-96-1336, November 20, 2012.

his remorse and reformation after his dismissal from the service meriting the Court's liberality." Similarly, in *Castillo v. Calanog*,[41] the Court granted former Judge Manuel M. Calanog's petition for clemency and compassion and lifted the penalty of disqualification from public office for immorality after the Court found him to be "sincerely repentant" three years after the Court's July 12, 1991 Decision dismissing him from the service.

In sum, the Dissent's invocation of the doctrine of immutability of judgments with respect to the Court's December 14, 2010 Resolution is clearly misplaced. To reiterate, the Court's issuances on administrative matters pursuant to its exercise of its regulatory supervision over the IBP does not become final and immutable as in ordinary adjudicated cases; it is always subject to continuing review by the Court, guided by the dictates of the Constitution, laws and regulations, as well as by policies the Court deem necessary, practicable, wise, and appropriate in light of prevailing circumstances.

The Rules of Court are not strictly observed in administrative matters

I cannot agree with the Dissent's position that IBP Southern Luzon's petition for intervention is barred by Section 2, Rule 19 of the Rules of Court that allows intervention at any time before final judgment. If judgment does not really become final in the sense understood in the adjudicatory sense, then the admission of an intervention should always be subject to the Court's wise exercise of discretion. There, too, is the well-settled rule that the Dissent conveniently failed to mention: technical rules of procedure (*i.e.* the rules on Intervention in the Rules of Court) are not strictly applied in administrative proceedings such as the present case. In *Office of the Court of Administrator v. Canque*,[42] we pointedly stated:

Technical rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process

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[41] A.M. No. RTJ-90-447, December 16, 1994, 239 SCRA 268.

[42] A.M. No. P-04-1830, June 4, 2009, 588 SCRA 226, 236.

cannot be fully equated with due process in its strict judicial sense. A formal or trial-type hearing is not required. [Emphasis supplied]

Another misplaced argument is the Dissent's invocation of our ruling in *Chavez v. PCGG*[43] and *Looyuko v. Court of Appeals*[44] which brings to mind an apple and oranges comparison. These cited cases, although indisputably correct in their particular setting, cannot be compared with the present matter because they are adjudicated civil cases governed strictly by the Rules of Civil Procedure on intervention.

Beyond the rule on stability of our jurisprudence and procedural technicalities, the Dissent should appreciate the relationship of the Court to the IBP and the role that the Constitution has assigned to the Court, all of which have been mentioned and discussed elsewhere in this Separate Concurring Opinion.[45] Likewise, it should have considered the importance of the administrative matter before us - issues that may determine future elections of the IBP. In these lights, insistence on the use of strict procedural rules cannot but be regarded as resort to petty arguments that only waste the time and attention of this Court. To use our usual phraseology on these kinds of arguments, rules of procedure should not be applied in a very rigid, technical sense; they are only used to help secure, not override, substantial justice. Note that we have made these rulings *even in the exercise of our adjudicative power* where stricter rules apply. In *Ginete v. Court of Appeals*,[46] we said:

> Let it be emphasized that **the rules of procedure should be viewed as 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. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and

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[43] G.R. No. 130716, May 19, 1999, 307 SCRA 394.

[44] G.R. Nos. 102696,102716,108257 & 120954, July 12, 2001, 361 SCRA 150.

[45] See pp. 24-26 of this Separate Concurring Opinion.

[46] G.R. No. 127596, September 24, 1998, 292 SCRA 38.

compelling as to alter even that which this Court itself has already declared to be final, as we are now constrained to do in the instant case.

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The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice. [Emphasis supplied.]

Similarly, in *de Guzman v. Sandiganbayan*,[47] we had occasion to state:

The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering justice have always been, as they ought to be, conscientiously guided by the norm that **when on the balance, technicalities take a backseat against substantive rights, and not the other way around.** Truly then, technicalities, in the appropriate language of Justice Makalintal, "should give way to the realities of the situation." [Emphasis supplied.]

Estoppel by laches cannot be applied to IBP-Southern Luzon and Governor Joyas

The Dissent's invocation of the doctrine of estoppel by laches on the part of IBP-Southern Luzon and Governor Joyas is erroneous. Laches has been defined as the failure or neglect for an *unreasonable and unexplained* length time to do that which, by exercising due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it.

Significantly, laches is not concerned with mere lapse of time; the fact of delay, standing alone, is insufficient to constitute

[47] 326 Phil. 182 (1996).

laches. In *Chavez v. Perez*,[48] we emphasized that the hallmark of the application of laches is a question of inequity or unfairness in permitting a right or claim to be enforced or asserted, thus:

> The doctrine of laches is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims, and is **principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.** There is no absolute rule as to what constitutes laches; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court, and since it is an equitable doctrine, its application is controlled by equitable considerations. It cannot be worked to defeat justice or to perpetrate fraud and injustice. [emphasis supplied]

In the present case, the Dissent failed to cite any instance of unfairness or inequity in allowing the alleged belated intervention of IBP-Southern Luzon and Governor Joyas. At any rate, as mentioned above, the Court's issuances, on administrative matters pursuant to its exercise of its regulatory supervision over the IBP (such as the Court's December 14, 2010 Resolution) do not become final and immutable as in ordinary adjudicatory cases; they are always subject to continuing review by the Court. In filing the petition for intervention, IBP-Southern Luzon and Governor Joyas are merely asking for proper guidance from the Court pertaining to the issues involved with the IBP elections for EVP for the 2011-2013 term by invoking the Court's regulatory supervision over the IBP.

IBP-Southern Luzon and Governor Joyas have legal interest in the subject matter of litigation

I disagree with the Dissent's claim that IBP-Southern Luzon or Governor Joyas has no legal interest in the subject matter of litigation that would justify their intervention.

Contrary to the Dissent's view, they have (as all the other eight regions of the IBP) a direct and immediate interest in the

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[48] G.R. No. 109808, March 1, 1995, 242 SCRA 73, 80.

proper implementation of the rotational rule with respect to the position of EVP for the 2011-2013 term, in the same manner that this Court and all its Members have similar interests on the matter. In fact, this Court's ruling on the proper implementation of the rotational rule for the EVP for the 2011-2013 term will directly and immediately impact on IBP-Southern Luzon which will either gain or lose the opportunity for direct and meaningful participation in IBP affairs as a result of the direct legal operation and effect of the Court's determination in the present case. Section 47 of the IBP By-laws, as amended, guarantees this legal interest when it provides that "[t]he Executive Vice President shall be elected on a strict rotation basis by the Board of Governors from among themselves, by the vote of at least five (5) Governors.

At any rate, the Court, has recognized exceptions to Section Rule 19, in the interest of substantial justice, as reflected in the following ruling:

> The rule on intervention, like all other rules of procedure, is intended to make the powers of the Court fully and completely available for justice. It is aimed to facilitate a comprehensive adjudication of rival claims overriding technicalities on the timeliness of the filing thereof. [49]

Prior to the 2010 amendment of Section 47, Article VII of the IBP By-laws, the rotation rule should be considered from the prism of the Presidency and not EVP

I disagree with the dissent's unqualified position that the rotation rule pertains to the position of EVP and not the position of IBP President. As the above discussions fully explained, the previous version of Section 47, Article VII of the IBP By-laws expressly required that the Presidency shall rotate among the nine (9) regions. The Dissent's view that a completed turn strictly requires election as EVP for the current term (two years of service as EVP) and then service as President for the

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[49] *Social Justice Society v. Atienza,* G.R. No. 156052, February 13, 2008, 545 SCRA 92.

next term (plus another two years as IBP President), is not supported by the plain import of the wordings of previous version of Section 47, Article VII of the IBP By-Laws that merely required that all the nine (9) regions, through their respective Governors, shall at some time during the rotation take their turn as IBP President. Under this system, it is the Presidency that must be counted, considered and assured and the election or effective rotation of the EVP is only a part of ensuring the rotation of the Presidency because the two positions are inextricably linked by the element of succession. In this sense, any rotation in the EVP post under the previous Section 47 was a subsidiary consideration that must bow to the primacy of the rotation of the Presidency.

Again, contrary to the Dissent's view, the Court's ruling *Velez v. Atty. De Vera* that the first rotation was completed with the election of Atty. De Vera as EVP is not a totally incorrect ruling; it is merely an incomplete ruling, but one that can nevertheless be put to good use with the correct appreciation and understanding of what Section 47, Article VII of the IBP By-Laws originally provided.

As previously discussed, the first region to avail of its turn in Bar Matter No. 491 was IBP-Western Visayas with the election of Atty. Tan as President and Atty. Tanopo of Central Luzon as EVP. This was the very first election under Bar Matter No. 491 and the import of this amendment would be trivialized if the first election conducted under it would not fall under its rule. To be sure, Bar Matter No. 491 never stated, expressly or impliedly, that this first election was to be an interim measure; it simply decreed that there shall be presidential rotation and called for an election. From this perspective, *Velez* could not be wrong in counting the election of Atty. Tan as President as the first turn in the presidential rotational cycle, even if President Tan did not go through any prior election as EVP. Under this premise, *Velez* could not have been a totally incorrect ruling. As I mentioned above, it is a ruling that can be put to good use with a proper and correct understanding of what Bar Matter No. 491 provided for.

Thus, in this limited sense, I agree with the *ponencia* that the Court effectively opened a new round of rotation for the EVP position, to start after the 2003-2005 term. The new rotation cycle for EVPs, preparatory to the presidential rotation that Bar Matter No. 491 expressly required, started with the 2005-2007 election of Atty. Bautista of Central Luzon as EVP. From the *Velez* view, the presidential rotation that Bar Matter No. 491 required came to pass as the first turn in 2nd rotational cycle when Atty. Bautista succeeded to the IBP Presidency in 2007-2009 term.

In sum, following *Velez* to its logical consequence and observing the principle of exclusion, all regions other than Central Luzon, Southern Luzon and Eastern Mindanao can compete for the EVP post for the 2011-2013 term. This conclusion, of course, contradicts the IBP-Western Visayas' wish to have the 2011-2013 EVP position handed to it unopposed in a golden platter.

The Court's December 14, 2010 Resolution did not overturn the Velez ruling

I likewise take exception to the Dissent's position that the Court's December 14, 2010 Resolution effectively overturned the *Velez* ruling. To be sure, there never was any statement in the December 14, 2010 ruling that the *Velez* ruling is incorrect.

Even if there had been, this Court – at this point – is not powerless to correct whatever misimpressions there might have been because of the confusing rulings heretofore issued.

It is to be noted that, the December 14, 2010 ruling itself has its imperfections that deepened the deviations from the rotation system instead of setting the system aright. For one, it completely failed to take into account the Court's ruling in *Velez*. Also, the Court erroneously adopted the Special Committee's incomplete computation of the presidential rotational cycle. Instead of counting the cycle from the Presidency of Atty. Eugene Tan of Western Visayas in the 1989-1991 term as Bar Matter No. 491 dictated, the Court counted the rotation from the Central Luzon Presidency in the 1991-1993 term. This mistaken premise led the Court to

conclude that only the Governors of the Western Visayas and Eastern Mindanao regions had not yet had their turn as EVP so that the choice of EVP for the 2009-2011 term should be solely confined to them.

The continued wranglings about the Court's past rulings – as exemplified by the Dissent's own objections – constitute the very reason why a clean slate, justified by a reasonably sensible reading of the By-laws, should now be made, to free up the IBP from any and all seeds of confusion that may linger. ***In other words, rather than continue to find fault with past rulings and with one another, let this Court now accept that a new rule on rotation is upon us, and start to apply and implement this new rule without any reservations or qualifications arising from past rulings this Court made. This is the wisest, most reasonable and most practical ruling we can make under the present circumstances.***

The transitory and continuing nature of the Court's regulatory supervision over the IBP allows for a correction of the erroneous December 14, 2010 Resolution and does not amount to a flip-flop

As previously discussed, the Court's issuances pertaining to its regulatory supervision over the IBP does not become final and immutable as ordinary cases, as it is always subject to continuing review by the Court. This notion debunks entirely the Dissent's charge of flip-flopping should the Court reconsider its December 14, 2010 Resolution.

In light of the role, participation, powers and duties that the Court and its Members hold with respect to the IBP, the worst move that this Court can make at this point is to be irretrievably wedded to decisions and rulings the Court has rendered in the past. Rather, as the Supreme Tribunal in the land with specific powers duties and powers imposed no less than the Constitution, it should now act wisely, with foresight and with due regard to the lessons of the past; it should seek to restore rational consistency in the future rulings affecting the IBP. In fact, the Court should

itself strive not to be a part of the problem; it cannot but be in the IBP's stage as a participant in a constitutionally-designed play, but it must act more as a actor/director keenly keeping a close and critical eye on the events and ready to lead, guide and act with measured firmness if and when the play gets out of hand.

The essence of judicial and jurisprudential life is growth and greater understanding of our efforts and their results, particularly for our constituencies and the laws we interpret. For as long as we do not flip-flop on the same case, thus confusing not only the public but the same parties who have previously applied our rulings and decisions, we should not hesitate to backtrack and correct our actions in the past, particularly, if our new directions better serve the objectives and purposes of the laws we interpret and the greater public good. After all, one of the Court's own venerated doctrine – *stare decisis et non quieta movere* – itself recognizes that rulings are "not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside."[50]

D. Creation of a Permanent IBP Committee in the Supreme Court.

Consistent with the above principles and as a **pro-active response** that the Court can offer the IBP and the public who depend on lawyers for their legal needs, the Court must now recognize the continuing need for study and consultations with the IBP on what is best for the organization. The Court cannot undertake its constitutional duties alone. The IBP itself – of which the Members of this Court are themselves a member – should always actively be consulted as the party directly and immediately affected by the rulings and actions of the Court.

Towards this end, I propose the creation of a new and continuing IBP Committee in the Court to generally handle the IBP's affairs; to study and suggest recommendations;

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[50] *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections*, G.R. No. 190529, April 29, 2010, 619 SCRA 585, 595.

to take the lead and initiative in efforts concerning the IBP; and to troubleshoot whatever problems may occur, instead of creating a special committee whenever IBP-related problems arise.

CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia* of Justice Jose Catral Mendoza and the concurring opinion of Justice Arturo Brion. In addition, I wish to put on record the following observations.

The statement of events from the main, concurring and dissenting opinions in this case accurately chronicle the crises of leadership of the Integrated Bar of the Philippines at various periods in its history. These leadership crises may have alienated many ordinary practitioners from either taking full advantage of the benefits of an integrated bar or wanting to participate in the democratic processes for choosing its leaders. We should start to take judicial notice of the existence of many other organizations of lawyers that now exist that do not experience these earthshaking struggles for power. For instance, there is the WILOCI, Philippine Bar Association, Alternative Law Group Network, Free Legal Assistance Group and many others.

Perhaps, there may be other ways to integrate the bar that will more effectively and efficiently meet its purposes, further democratize its leadership and will not consume so much time and energy on the part of the Court. For instance, lawyers may choose to join an existing organization which in turn will be part of a council or coalition that comprises the new integrated bar. I am sure that there may be other more creative suggestions coming from the present membership of the Integrated Bar of the Philippines. I am of the opinion that We should now engage the Integrated Bar of the Philippines to fundamentally rethink its structure.

Thus, in addition to the functions also mentioned by Justices Jose Catral Mendoza and Arturo Brion, the Committee on IBP Affairs should also have as its continuing mandate regular reviews

of the alternative modalities to integrate our bar. In the spirit of inclusiveness, the members of the profession should be encouraged, under our supervision, to give full and unadulterated feedback and proposals. The IBP should submit to the Committee a viable and methodical plan to get these inputs. Perhaps it can even tap the law schools to assist in getting these feedback and proposals from their alumni. The IBP should then submit a Committee Report on the Views of the Profession on integrating the bar to this Court in order that future reforms will be properly guided.

We must remember that the present mode of integrating the bar was initiated by this Court in its *per curiam* Resolution dated January 9, 1973. Consistent with the views already expressed, I agree that it is also our duty to ensure that the organizational structure to accomplish the integration of the bar continues to be responsive.

In the meantime, I vote to:

(1) DECLARE that the election for the position of Executive Vice President of the IBP for the 2011 to 2013 term open to all regions;

(2) CREATE a Committee for IBP Affairs with the functions mentioned in the opinions of Justice Mendoza and Justice Brion and this reflection; and

(3) MEND Sections 47 and 49, Article VII of the IBP By-Laws as recommended in the main *ponencia* of Justice Jose Catral Mendoza.

DISSENTING OPINION

VELASCO, JR., *J.*:

Prefatory Statement

What basically is a simple incident involving nothing more than the execution of the last phase of the Court's final and executory Resolution dated December 14, 2010 on the leadership structure of the IBP has all of a sudden turned into a complex

proceeding where said resolution is being revisited and sought to be revised and set aside and new matters are considered. But worse, the adverted decision is claimed to be a mistake, reasons are proffered why it should not be executed as written, and the abandonment of what it perceives to be a flawed ruling based on the faulty recommendations of the Special Committee composed of highly respected retired Justices of the Court is now proposed. Lastly, even the ruling in *Velez v. De Vera*[1] is seen as an erroneous disposition of the rotation issue of the Executive Vice President of the IBP. The better option under the premises, I submit, is first to allow the full implementation of the Court's Decision. The Court can later form a committee to recommend measures to improve the system and then adopt measures and/or promulgate new rules that will prevent perceived matters of confusion and complication.

An open admission that the Court committed errors or made inaccurate findings and dispositions in *Velez* and in the above entitled administrative matters would expose the Court to unnecessary criticism. The reversal or modification of the December 14, 2010 Resolution, without doubt, will cause irreparable damage and extreme prejudice to the Court and the entire judicial institution. Hence, this dissent.

The Case

For resolution of the Court is the "Motion for Leave to Intervene and to Admit the Attached Petition for Intervention" filed by the IBP-Southern Luzon Region (IBP-SLR) on July 24, 2012.

Proposed intervening petitioner IBP-SLR seeks to re-open, set aside and nullify the Resolution of this Court dated **December 14, 2010** which declared that *"either the governor of the Western Visayas Region or the governor of the Eastern Mindanao Region should be elected as Executive Vice President for the 2009-2011 term,"* and that the *"one who is not chosen for this term shall have his turn in the next 2011-2013 term."* The said Resolution, which became final in February 2011, was penned by then Chief Justice Renato C.

[1] A.C. No. 6697, July 25, 2006, 345 SCRA 496.

Corona and was concurred in by seven (7) Justices (Teresita J. Leonardo-De Castro, Arturo D. Brion, Lucas P. Bersamin, Roberto A. Abad, Martin S. Villarama, Jr., Jose Portugal Perez and Jose Catral Mendoza). Justice Antonio T. Carpio and the undersigned cast dissenting votes, while Justices Conchita Carpio-Morales (ret.), Antonio Eduardo B. Nachura (now also retired), Diosdado M. Peralta, Mariano C. Del Castillo and Maria Lourdes P. A. Sereno (*now* Chief Justice) inhibited from these consolidated cases.

A YEAR and **FIVE MONTHS after finality of the said December 14, 2010 Resolution** and despite its partial execution with the election, representing Eastern Mindanao Region for the term 2009-2011, of Atty. Roan I. Libarios (Atty. Libarios) as Executive Vice President (EVP), IBP-SLR, represented by Governor Joyas, a non-party to the instant cases, who now wants to resurrect a case in repose.

To recall, *there is not a single decision or resolution of this Court that reversed or annulled its previous final decision that was not based on a motion filed within the fifteen (15)-day period from notice* of said assailed decision. The cases of *Apo Fruits* and *Keppel* are not precedents to the instant cases since the affected parties thereat filed their motions for reconsideration within the 15-day period. Simply put, *Apo Fruits* and *Keppel* were "LIVE" cases when the losing parties sought reconsideration. *Unlike here*.

If the proposition in the *ponencia* that the December 14, 2010 Decision on the EVP issue should be nullified is upheld, this case will be the very first instance where the Court will make a brazen volte-face of its already final and partially executed resolution. Worse, this will be done at the instance of a non-party who does not stand to benefit from the *ponencia* since his region (SLR) had already its turn to field its own EVP. Such a move would set a bad and dangerous precedent and seriously erode the stability of final decisions and resolutions.

Factual Antecedents

In 2009, some high-ranking officers of the Integrated Bar of the Philippines (IBP) filed an administrative case in relation to

the leadership and election controversies in the IBP. In that case, docketed as A.C. No. 8292 and entitled *Attys. Marcial M. Magsino, et al. v. Attys. Rogelio A. Vinluan, et al.*, the Court, in an *En Banc* Resolution dated June 2, 2009, created a **Special (Investigating) Committee**[2] composed of **Justices Carolina C. Griño-Aquino, Bernardo P. Pardo and Romeo J. Callejo, Sr.** to look into the "*brewing controversies in the IBP elections, specifically in the elections of Vice-President for the Greater Manila Region and Executive Vice-President of the IBP itself x x x any other election controversy involving other chapters of the IBP, if any.*"

During the Preliminary Conference before the Special Committee, all concerned agreed to focus the investigation on the following issues or concerns:

1. What is the correct interpretation of Section 31, Article V of the IBP By-Laws which provides:

   SEC. 31. Membership. — The membership (of Delegates) shall consist of all the Chapter Presidents and, in the case of Chapters entitled to more than one Delegate each, the Vice-Presidents of the Chapters and such additional Delegates as the Chapters are entitled to. Unless the Vice-President is already a Delegate, he shall be an alternate Delegate. Additional Delegates and alternates shall in proper cases be elected by the Board of Officers of the Chapter. Members of the Board of Governors who are not Delegates shall be members *ex officio* of the House, without the right to vote.

2. Who was validly elected Governor for the Greater Manila Region?

3. Who was validly elected Governor for Western Visayas Region?

4. Who was validly elected Governor for Western Mindanao Region?

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[2] Justice *Carolina C. Griño-Aquino* (Ret.), served as Chairperson and Justices *Bernardo P. Pardo* (Ret.) and *Romeo J. Callejo, Sr.* (Ret.), as Members.

5. Who was validly elected IBP Executive Vice President for the next term?

6. What is the liability, if any, of respondent Atty. Rogelio A. Vinluan under the administrative complaint for "grave professional misconduct, violation of attorney's oath, and acts inimical to the IBP" filed against him by Attys. Marcial Magsino, Manuel Maramba and Nasser Marohomsalic?

As regards the election of the IBP-EVP, the Special Committee cited in its Report and Recommendation dated July 9, 2009 that "Sec. 47, Art VII of the By-Laws, as amended by Bar Matter 491, Oct. 6, 1989, provides that the Executive Vice President shall be chosen by the Board of Governors from among the nine (9) regional governors. The Executive Vice President shall automatically become president for the next succeeding term. The Presidency shall rotate among the nine Regions." The Committee further stated:

The list of national presidents furnished the Special Committee by the IBP National Secretariat, shows that the governors of the following regions were President of the IBP during the past nine (9) terms (1991-2009):

Numeriano Tanopo, Jr. (Pangasinan)	Central Luzon	1991-1993
Mervin G. Encanto (Quezon City)	Greater Manila	1993-1995
Raul R. Angangco (Makati)	Southern Luzon	1995-1997
Jose Aguila Grapilon (Biliran)	Eastern Visayas	1997-1999
Arthur D. Lim (Zambasulta)	Western Mindanao	1999-2001
Teofilo S. Pilando, Jr. (Kalinga Apayao)	Northern Luzon	2001-2003
Jose Anselmo L. Cadiz (Camarines Sur)	Bicolandia	2005-Aug. 2006
Jose Vicente B. Salazar (Albay)	Bicolandia	Aug. 2006-2007
Feliciano M. Bautista (Pangasinan)	Central Luzon	2007-2009

Only the Governors of the Western Visayas and Eastern Mindanao regions have not yet had their turn as Executive Vice President cum next IBP President, while Central Luzon and Bicolandia have had two (2) terms already.

Therefore**, either the governor of the Western Visayas Region, or the governor of the Eastern Mindanao Region should be elected as Executive Vice President for the 2009-2011 term. The one who is not chosen for this term, shall have his turn in the next (2011-2013) term.** (Emphasis supplied.)

On December 14, 2010, the Court, by Resolution (December 14, 2010 Resolution), adopted *in toto* the Report and Recommendation of the Special Committee thus created, and disposed of the controversies relating to the IBP elections as follows:

> WHEREFORE, premises considered, the Court resolves that:
>
> 1. The elections of Attys. Manuel M. Maramba, Erwin M. Fortunato and Nasser A. Marohomsalic as Governors for the Greater Manila Region, Western Visayas Region and Western Mindanao Region, respectively, for the term 2009-2011 are UPHELD;
>
> **2. A special election to elect the IBP Executive Vice President for the 2009-2011 term is hereby ORDERED to be held under the supervision of this Court within seven (7) days from receipt of this Resolution with Attys. Maramba, Fortunato and Marohomsalic being allowed to represent and vote as duly-elected Governors of their respective regions;**
>
> 3. Attys. Rogelio Vinluan, Abelardo Estrada, Bonifacio Barandon, Jr., Evergisto Escalon and Raymund Mercado are all found GUILTY of grave professional misconduct arising from their actuations in connection with the controversies in the elections in the IBP last April 25, 2009 and May 9, 2009 and are hereby disqualified to run as national officers of the IBP in any subsequent election. While their elections as Governors for the term 2007-2009 can no longer be annulled as this has already expired, Atty. Vinluan is declared unfit to hold the position of IBP Executive Vice President for the 2007-2009 term and therefore barred from succeeding as IBP President for the 2009-2011 term;

4. The proposed amendments to Sections 31, 33, par. (g), 39, 42, and 43, Article VI and Section 47, Article VII of the IBP By-Laws as contained in the Report and Recommendation of the Special Committee dated July 9, 2009 are hereby approved and adopted; and

5. The designation of retired SC Justice Santiago Kapunan as Officer-in-Charge of the IBP shall continue, unless earlier revoked by the Court, but not to extend beyond June 30, 2011.

SO ORDERED. (Emphasis supplied.)

On **February 8, 2011**, the Court denied with finality the Motion for Reconsideration of the December 14, 2010 Resolution filed by Atty. Elpidio G. Soriano III.[3]

Pursuant to the December 14, 2010 Resolution, a special election was held to elect the IBP-EVP for the 2009-2011 term where Atty. Libarios of the IBP-Eastern Mindanao emerged as winner.[4] Atty. Libarios eventually assumed the IBP Presidency for the 2011-2013 term.

On April 27, 2011, the IBP Board of Governors requested a clarification from the Court as to the application of the rotational rule in the elections for Governor of the IBP-Western Visayas Region.

On July 27, 2012, the IBP-SLR, represented by Governor Vicente M. Joyas ("Governor Joyas"), filed a *Motion for Leave to Intervene and to Admit the Attached Petition-in-Intervention* seeking a declaration from the Court that the IBP-SLR may field a candidate for the position of IBP-EVP for the 2011-2013 term. In its Petition-in-Intervention, the IBP-SLR contends that the non-assumption of Atty. Vinluan to the IBP-Presidency because of his disqualification pursuant to the December 14, 2010 Resolution denied the IBP-SLR the right to the IBP Presidency for the 2009-2011 term without fault attributable to the region. The petition further underscored that it will take another sixteen (16) years for the region to be entitled to vie

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[3] *Rollo*, p. 3240.

[4] *Id.* at 3112.

for the position of IBP-EVP. The IBP-SLR rued that considering the twelve (12)-year interval between the end of the term of Atty. Raul R. Angangco in 1997 and the year 2009, when Atty. Vinluan was supposed to assume the IBP Presidency, the region will have to wait a total of twenty-eight (28) years before it can be afforded the chance under the rotation system to have somebody from the region elected as IBP-EVP and eventually become IBP president.[5]

In response, the IBP-Western Visayas Region (WVR) filed an "*Ex Abundanti Ad Cautelam* Vigorous Opposition/ Comment"[6] to the proposed intervention ("Opposition/Comment") asseverating that this Court, in its December 14, 20l0 Resolution, has already declared that "only the Governors of the Western Visayas and Eastern Mindanao Regions have not had their turns as [EVPs]." But since incumbent president Roan I. Libarios was elected EVP for the 2009-2011 term, then it is only IBP-WVR which is qualified to field a candidate for EVP for said term. It also argued that the proposed intervention is improper, filed as it was after the rendition and finality of the December l4, 20l0 Resolution. The IBP-SLR, IBP-WVR adds, is disqualified to field a candidate since it has served as IBP-EVP twice. Lastly, the IBP-WVR points out that, in *Velez v. De Vera*,[7] this Court has held that "the rotation rule pertains in particular to the position of IBP-EVP while the automatic successions rule pertains to the Presidency."

The House of Delegates of IBP-WVR and the IBP Governors for Eastern Visayas and WV Regions filed their comments[8] on the proposed intervention of IBP-SLR raising basically the same arguments of IBP-WVR in its Opposition/Comment.

By Resolution of December 4, 2012, the Court addressed the issue sought to be clarified by IBP-WVR on the rotational rule with respect to the election of governor of the said region.

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[5] *Id.* at 3454-3456.

[6] *Id.* at 3475.

[7] *Supra* note 1.

[8] *Rollo*, pp. 3569-3584.

The Court explained that the rotational rule was one by exclusion such that in the election of the governor of a region, all chapters of the region shall be given the opportunity to have their nominee elected as governor, to the exclusion of those chapters that have already served in the rotational cycle. However, the Court deferred action on the proposed intervention sought by the IBP-SLR and required the IBP Board of Governors (BOG) to file its comment on the petition for intervention. The dispositive portion of the Resolution reads as follows:

> **WHEREFORE**, the Court hereby holds that in the IBP-Western Visayas Region, the rotation by exclusion shall be adopted such that, initially, all chapters of the region shall have the equal opportunity to vie for the position of Governor for the next cycle except Romblon.
>
> The Temporary Restraining Order dated May 3, 2011 is hereby lifted and the IBP-Western Visayas Region is hereby ordered to proceed with its election of Governor for the 2011-2013 term pursuant to the rotation by exclusion rule.
>
> The IBP Board of Governors is hereby ordered to file its comment on the Petition for Intervention of IBP-Southern Luzon, within ten (10) days from receipt hereof.
>
> **SO ORDERED**.

In its *Comment* dated January 2, 2013, the IBP BOG prays that the "*IBP-Southern Luzon be allowed to nominate a candidate for EVP for the 2011-2013 term, without prejudice to the right of other regions except IBP-Eastern Mindanao, to do the same*."[9]

Subsequently, Governor Joyas filed a *Rejoinder*[10] stating that the Special Committee confined its computation of the rotation cycle to the past nine (9) terms of IBP presidents (l99l to 2009) and completely ignored the relevant period l990-l99l when Governor Eugene A. Tan of WV assumed the IBP Presidency. Since Western Visayas had its Governor Tan serving as president (l990-l99l) after the adoption of the rotation rule

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[9] *Id.* at 3608.

[10] *Id.* at 3616.

under Bar Matter No. 491, Governor Joyas then concludes that only Eastern Mindanao was eligible to vie for IBP-EBP for the 2009-2011 term. He also faults the Special Committee in considering WVR as not yet having an IBP-EVP. Based on the past rotation of the presidency, Governor Joyas now prays that IBP-SLR be declared eligible to vie for the position of IBP-EVP cum president for the 20l3-20l5 term *"without prejudice to other regions also vying for the post."*

Issues

I shall endeavor to address the following issues raised in the *ponencia*:

A. Whether the motion for intervention of IBP-Southern Luzon can be allowed and admitted;

B. Whether the first rotational cycle was completed with the election of Atty. Leonard De Vera; (This issue was not presented in the petition-in-intervention but was belatedly raised by IBP-SLR only in its Rejoinder.)

C. Whether IBP-Southern Luzon has already served in the current rotation; *and*

D. Whether the IBP-Western Visayas has already served in the current rotation.

DISCUSSION

First Issue:

Whether the motion for intervention of IBP- SLR can be allowed and admitted

Ruling on the issue in the affirmative, Justice Mendoza declares in his *ponencia* that the Court, exercising its prerogative to relax procedural rules on intervention, is allowing intervention in order to write *finis* to the present dispute and to prevent similar IBP election controversies in the future.

I believe otherwise.

The proposed intervention of IBP-SLR should be denied for the following reasons:

1. IBP-SLR nor Governor Joyas has no legal interest in the subject matter of the litigation.

Neither IBP-SLR nor Governor Joyas has LEGAL INTEREST IN THE SUBJECT MATTER OF THE LITIGATION, OR IN THE SUCCESS OF EITHER OF THE PARTIES as required under Sec. 1, Rule 19 of the Rules of Court, which reads:

> SECTION 1. *Who may intervene*. – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervenor's rights may be fully protected in a separate proceeding.

IBP-SLR is not qualified to field a candidate for IBP-EVP for the term 2011-2013 because the BOG had already elected Atty. Raul Angangco of that region as IBP-EVP for the term l993-l995 and, in addition, had also elected a 2nd IBP-EVP in the person of Atty. Vinluan for the term 2009 to 2011. Clearly, the IBP-SLR had already two (2) elected EVPs, thus precluding the election of movant as the 3rd EVP in this present rotation.

Considering that **IBP-SLR can *no longer field a candidate*** for the position of IBP-EVP and ***not qualified*** **to field a candidate for IBP-EVP** for the 2011-2013 term, **IBP-SLR and Governor Joyas have *NO legal interest*** in the matter subject of the assailed December 14, 20l0 Resolution. Ergo, the proposed intervention has no leg to stand on and is patently devoid of merit.

As correctly concluded by Justice Mendoza in his first and second drafts but which conclusion unfortunately was deleted in his third revision, IBP-SLR has NO right to vie for the position of EVP for the term 2011-2013. Thus, he explained:

> The Court rules in the negative. The reason is that IBP-Southern Luzon already had its turn in the current rotational cycle. In its December 14, 2010 Resolution, the Court stated:
>
> xxx x x x xxx

With the election of Atty. Raul R. Angangco as EVP-IBP for the 1993-1995 term, and his consequent assumption as IBP president for the 1995-1997 term, it becomes clear that IBP-Southern Luzon already had its turn in the current rotation.

Thus, the disqualification of Atty. Rogelio Vinluan as IBP president would not qualify IBP-Southern Luzon to participate in the forthcoming elections for EVP-IBP, since, as stated in the Court's December 14, 2010 Resolution quoted above, IBP-Southern Luzon was able to serve as IBP-EVP for the 1993-1995 term. The rule was restated in *Velez v. De Vera* as follows:

> In Bar Matter 491, it is clear that it is the position of IBP EVP which is actually rotated among the nine Regional Governors. The rotation with respect to the Presidency is merely a result of the automatic succession rule of the IBP EVP to the Presidency. **Thus, the rotation rule pertains in particular to the position of IBP EVP, while the automatic succession rule pertains to the Presidency**. The rotation with respect to the Presidency is but a consequence of the automatic succession rule provided in Section 47 of the IBP By-Laws.

At any rate, it bears mentioning that with the election and service of Atty. Vinluan of the IBP-Southern Luzon as EVP-IBP for the 2007-2009 term, the purpose of the rotation system to give equal opportunity to all regions of the IBP has already been satisfied.

Moreover, the latest version of Justice Mendoza's *ponencia* **admitted** that:

> With respect to IBP-Southern Luzon, following the ruling in Velez, **it is clear that it already had its turn to serve as EVP** in the Second Rotational Cycle.[11]

Consequently, this finding of Justice Mendoza that IBP-SLR does not have any right to field a candidate for EVP for the 2011-2013 term precludes the Court from entertaining the petition-in-intervention of said region.

2. *IBP-SLR and Governor Joyas are guilty of estoppel.*

The intervention of IBP-SLR was filed ***only*** on July 27, 2012 or MORE THAN A YEAR after Governor Joyas assumed the

[11] Decision, p. 13.

position of Governor for Southern Luzon on July l, 2011 and *over one (1) year and five (5) months after the judgment of a case* in which intervention is sought has become final and executory.

In view thereof, **Governor Joyas is considered estopped** from questioning the already final and partially executed December 14, 2010 Resolution. As it were, Governor Joyas waited for more than ONE (1) FULL YEAR after assuming the position of SLR Governor before attempting to reopen the already final resolution of the Court. It cannot be denied that Governor Joyas was fully aware of the December 14, 2010 Resolution of this Court. Yet, without presenting any justifiable explanation, he did not lift a finger to question the same when he became Governor for Southern Luzon. Based on this factual setting, it is clear that *there is already waiver on his part and the part of IBP-SLR to question the final and executory December 14, 2010 Resolution*.

Also, just like the movants in the aforementioned case of *Chavez*, the IBP-SLR and Governor Joyas *have not offered any explanation for their belated intervention* considering that the December 14, 2010 Resolution and the proceedings leading up to the same were controversial, publicized and known to the movant. Indeed, they could not "feign unawareness" of the said resolution. Worse, the IBP-SLR had every opportunity to intervene before the finality of the December 14, 2010 Resolution but it chose to do so at this very late stage when the proposed intervention can only serve to delay the execution of the Resolution. Hence, because of their unjustified inaction for a considerable period of time, both the IBP-SLR and Governor Joyas are ESTOPPED from questioning said Resolution.

3. *Pinlac v. Court of Appeals*[12] *and the cases cited thereunder are not PRECEDENTS TO the petition at bar.*

The *ponencia* cites *Pinlac* as justification for the Court to relax the procedural rules on intervention. However, it must

[12] G.R. No. 91486, September 10, 2003, 410 SCRA 419.

be pointed out that *Pinlac* is not applicable to and, hence, cannot serve as precedent to the case at bar. In *Pinlac*, the Republic of the Philippines, as intervenor, undoubtedly had legal interest in a five (5)-hectare lot in Quezon City covered by OCT No. 333 where several government buildings, offices and complexes are situated, such as the House of Representatives and the Sandiganbayan, among others.

On the other hand, *IBP-SLR and Governor Joyas have no interest in the matter in litigation,* as admitted by Justice Mendoza in the first and second draft *ponencias* where he found that IBP-SLR already had two (2) EVPs (Angangco and Vinluan) and in the third draft *ponencia* where it was concluded that IBP-SLR already had its turn in choosing the EVP and, hence, is not qualified for the second rotation (p. 13, third draft *ponencia*).

Neither does *Mago v. Court of Appeals*[13] apply to the case at bar. In said case, petitioner Mago filed a Petition for Relief from Judgment/Order and a Motion to Intervene before the trial court *sixty-nine (69) days after he learned of the judgment* and, hence, were denied on that ground. The intervention was allowed as the Court found the intervenors therein as *indispensable parties with such substantial interest in the controversy or subject matter* that a final adjudication cannot be made in their absence without affecting, nay injuring, such interest. The application of rules was relaxed to disregard the tardy filing of the petition by nine (9) days to serve the ends of equity and justice based on substance and merit.

This, however, cannot be said of IBP-SLR and Gov. Joyas because, as erstwhile stated, IBP-SLR is already precluded from fielding a candidate for the position of the EVP pursuant to the rotation by exclusion rule.

In addition, the judgment of the RTC in *Mago* has not yet been executed when it was questioned by Mago, *et al.* unlike the December 14, 2010 Resolution in the instant case.

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[13] 363 Phil. 225 (1999).

The cited ***Director of Lands v. Court of Appeals***[14] **is also inapplicable** because, unlike IBP-SLR and Governor Joyas, the intervenors therein had substantial interest in the matter in litigation and, unlike the present case, there was no final and partially executed decision. In that case, Greenfield Development Corporation and Alabang Development Corporation filed their respective motions for intervention. Incidentally, their motions were filed when the petition for *certiorari* of the Director of Lands was submitted for decision but before this Court rendered any judgment thereon. The Court found that Greenfield and Alabang had interest in the title sought to be reconstituted by private respondent therein because the land covered by the title overlapped and included substantial portions of the land owned by Greenfield and Alabang. Aside from recognizing the movants as indispensable parties to the case, the Court granted the intervention in view of the higher and greater interest of the public in the efficacy and integrity of our land registration system.

In the instant case, however, there appears to be *no higher or greater public interest* which will be served in granting IBP-SLR's intervention. Thus, reliance on the case of *Director of Lands* is misplaced.

Similarly, ***Tahanan Development Corp. v. Court of Appeals***[15] **(*Tahanan*) is not a precedent** to the case at bar. In the said case, Tahanan filed a Petition to Set Aside Decision and Re-Open Proceedings 41 days after the trial court granted the petition for reconstitution of a title covering a parcel of land which overlaps a substantial part of Tahanan's land. This Court held that the trial court committed grave abuse of discretion when it denied Tahanan's "Petition to Set Aside Decision and Re-Open Proceedings," for, while said petition was not captioned as "Motion for Intervention," the allegations of the petition clearly and succinctly averred Tahanan's legal interest in the matter in litigation, which interest is substantial and material, involving

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[14] G.R. No. 45168, September 25, 1979, 93 SCRA 238.

[15] G.R. No. 55771, November 15, 1982, 118 SCRA 273.

the boundaries, possession and ownership of about nine (9) hectares of land covered by the title sought to be reconstituted.

Like *Director of Lands*, the intervenors in *Tahanan* had legal interest in the matter in litigation and interposed their plea for intervention *before the execution* of the decision.

4. IBP-SLR can no longer intervene because the December 14, 2010 Resolution is already final and executory, and in fact, had already been PARTIALLY EXECUTED.

The December 14, 2010 Resolution has become FINAL AND EXECUTORY after the Court denied with finality the Motion for Reconsideration of Atty. Elpidio G. Soriano III on February 8, 2011.[16] Thus, the said Resolution has become IMMUTABLE AND UNALTERABLE and is no longer open to any amendment. Once a judgment becomes final, it may not be modified in any respect even if the modification is meant to correct what is perceived to be erroneous conclusions of law and fact.[17]

In *Chavez v. PCGG*,[18] the Court expressly ruled that the intervention sought by the movants can no longer be allowed after its judgment has become final, *to wit*:

> Movants Ma. Imelda Marcos-Manotoc, [*et al.*] allege that they are parties and signatories to the General and Supplemental Agreements dated December 28, 1993, which this Court, in its Decision promulgated on December 9, 1998, declared "NULL AND VOID for being contrary to law and the Constitution." As such, they claim to "have a legal interest in the matter in litigation, or in the success of either of the parties or an interest against both as to warrant their intervention." They add that their exclusion from the instant case resulted in a denial of their constitutional rights to due process and to equal protection of the laws. x x x x
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> The motions are not meritorious.

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[16] *Id.* at 3240.

[17] *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004, 428 SCRA 586, 599.

[18] G.R. No. 130716, May 19, 1999, 307 SCRA 394, 398-399.

Intervention Not Allowed After Final Judgment

First, **we cannot allow the Motion for Leave to Intervene at this late stage of the proceedings. Section 2, Rule 19 of the Rules of Court, provides that a motion to intervene should be filed "before rendition of judgment . . ."** Our Decision was promulgated December 9, 1998, while movants came to us only on January 22, 1999. Intervention can no longer be allowed in a case already terminated by final judgment.

Second, they do not even offer any valid plausible excuse for such late quest to assert their alleged rights. Indeed, they may have no cogent reason at all. As Petitioner Chavez asserts, the original petition, which was filed on October 3, 1997, was well-publicized. So were its proceedings, particularly the oral arguments heard on March 16, 1998. Movants have long been back in the mainstream of Philippine political and social life. Indeed, they could not (and in fact did not) even feign unawareness of the petition prior to its disposition.

Third, **the assailed Decision has become final and executory; the original parties have not filed any motion for reconsideration, and the period for doing so has long lapsed. Indeed, the movants are now legally barred from seeking leave to participate in this proceeding.** (Emphasis supplied.)

Verily, *there is NO jurisprudence allowing an intervention by a person who has not shown any legal interest in the matter in litigation after the decision has become final and executory*. Section 2, Rule 19 is explicit that no intervention is allowed after the judgment has become final. **Once finality sets in, what remains to be done is the purely ministerial enforcement and execution of the judgment.**

The former practice under Section 2, Rule 12 was to allow intervention "before or during trial." Subsequently, the Court liberalized the rule even further by allowing intervention before judgment is rendered which is now captured in Section 2, Rule l9 of the Rules of Court. The rationale behind the revised rule is clear – before a decision is rendered, the Court may still allow the introduction of additional evidence by applying the liberal interpretation of the period for trial which may be akin to reopening of trial. Since judgment has not yet been rendered,

the issues and subject matter of the intervention may still be resolved and incorporated in the decision; thus, the court is able to dispose of all the issues in the case. However, *after judgment has been rendered*, the court will no longer have the opportunity to conduct a total and exhaustive reassessment of all the issues in the case and the reopening of the case will greatly delay its adjudication. Needless to say, the resurrection of the case will be strictly considered *against* the proposed intervention after the decision is rendered and has become final.

For instance, in *Looyuko v. Court of Appeals*,[19] the motions for intervention were filed after judgment had already been rendered and when the same has become final and executory. Thus, this Court held that intervention can no longer be allowed in a case already terminated by final judgment. Since *intervention is merely a collateral or accessory or ancillary to the principal action*, and not an independent proceeding but rather *a dependent on or subsidiary to the case between the original parties*, when the main action ceases to exist, then there is no pending proceeding wherein the intervention may be based.[20]

Obviously, in the instant case, there is no more pending principal action wherein IBP-SLR may intervene since the Court already rendered a judgment which has since become final and executory. And in this case, it is significant to note that the **December 14, 2010 Resolution has already been *PARTIALLY EXECUTED*** when Atty. Libarios of IBP-Eastern Mindanao was elected as IBP president and, hence, the only remaining ministerial act to be performed is the election of an IBP-EVP from the IBP-WVR for the term 2011 to 2013. **Since the instant case is already in the execution stage, then there is no rhyme or reason why an intervention at this late stage will still be allowed.**

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[19] G.R. Nos. 102696, 102716, 108257 & 120954, July 12, 2001, 361 SCRA 150.

[20] *Id.* at 165-166.

Core Issue:

Whether the IBP-Western Visayas has already served in the current rotation

Of the three remaining issues espoused by the *ponencia*, I find the fourth issue, or the issue on *whether the IBP-Western Visayas (IBP-WVR) has already served in the current rotation* to be the most significant and hence, will be discussed here at length.

Right off, it is my considered view that this issue should be resolved in the **negative**. Necessarily, ***IBP-WVR should be considered as the only region which can vie for the position of the IBP EVP for the 2011-2013 term,*** or what is left of it.

The *"rotation by exclusion rule"* in the election of IBP-EVP was introduced in Bar Matter No. 491, *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines*.[21] In that case, the Court annulled the election of the national officers of the IBP held on June 3, 1989 and directed the holding of special elections for the Governors of each of the nine (9) IBP Regions and subsequent thereto, the election of the IBP national president and IBP-EVP. This is embodied in the Court's *per curiam* Resolution of October 6, l989, the *fallo* of which pertinently reads:

> It has been mentioned with no little insistence that the provision in the 1987 Constitution (Sec. 8, Art. VIII) providing for a Judicial and Bar Council composed of seven (7) members among whom is "a representative of the Integrated Bar," x x x may be the reason why the position of IBP president has attracted so much interest among the lawyers. The much coveted "power" erroneously perceived to be inherent in that office might have caused the corruption of the IBP elections. To impress upon the participants in that electoral exercise the seriousness of the misconduct which attended it and the stern disapproval with which it is viewed by this Court, and to restore the non-political character of the IBP and reduce, if not entirely eliminate, expensive electioneering for the top positions in the organization x x x the Court hereby ORDERS:

[21] October 6, 1989, 178 SCRA 398.

1. The IBP elections held on June 3, 1989 should be as they are hereby annulled.

2. The provisions of the IBP By-Laws for the direct election by the House of Delegates (approved by this Court in its resolution of July 9, 1985 in Bar Matter No. 287) of the following national officers:

(a) the officers of the House of Delegates;

(b) the IBP president; and

(c) the executive vice-president.

be repealed, this Court being empowered to amend, modify or repeal the By-Laws of the IBP under Section 77, Art. XI of said By-Laws.

3. The **former system of having the IBP president and [EVP] elected by the Board of Governors (composed of the governors of the nine (9) IBP regions) from among themselves (as provided in Sec. 47, Art. XII, Original IBP By-Laws) should be restored**. **The right of automatic succession by the [EVP] to the presidency upon the expiration of their two-year term (which was abolished by this Court's resolution dated July 9, 1985 in Bar Matter No. 287) should be as it is hereby restored.**

4. **At the end of the president's two-year term, the [EVP] shall automatically succeed to the office of president. The incoming board of governors shall then elect an [EVP] from among themselves. The position of [EVP] shall be rotated among the nine (9) IBP regions. One who has served as president may not run for election as [EVP] in a succeeding election until after the rotation of the presidency among the nine (9) regions shall have been completed; whereupon, the rotation shall begin anew.**

5. Section 47 of Article VII is hereby amended to read as follows:

> '*Section 47. National Officers .- The Integrated Bar of the Philippines shall have a President and* ***Executive Vice President to be chosen by the Board of Governors from among nine (9) regional governors, as much as practicable, on a rotation basis.*** *The Governors shall be ex officio Vice President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors to be appointed by the President with the consent of the Board.'*

6. Section 33(b), Art. V, IBP By-Laws, is hereby amended as follows:

'(b) The President and Executive Vice President of the IBP shall be the Chairman and Vice-Chairman, respectively, of the House of Delegates. The Secretary, Treasurer, and Sergeant-at-Arms shall be appointed by the President with the consent of the House of Delegates.'

7. Section 33(g) of Article V providing for the positions of Chairman, Vice-Chairman, Secretary, Treasurer and Sergeant-at-Arms of the House of Delegates is hereby repealed.

8. Section 37, Article VI is hereby amended to read as follows:

'Section 37. Composition of the Board. – The Integrated Bar of the Philippines shall be governed by a Board of Governors consisting of nine (9) Governors from the nine (9) regions as delineated in Section 3 of the Integration Rule, on the representation basis of one (1) Governor for each region to be elected by the members of the House of Delegates from that region only. The position of Governor should be rotated among the different Chapters in the region.'

9. Section 39, Article V is hereby amended as follows:

'Section 39. Nomination and election of the Governors. – At least one (1) month before the national convention the delegates from each region shall elect the Governor for their region, the choice of which shall as much as possible be rotated among the chapters in the region.'

10. Section 33(a), Article V is hereby amended by adding the following provision as part of the first paragraph:

'No convention of the House of Delegates nor of the general membership shall be held prior to any election in an election year.'

11. Section 39 (a), (b), (1), (2), (3), (4), (5), (6), and (7) of Article VI should be as they are hereby deleted.

All other provisions of the By-Laws including its amendment by the Resolution *en banc* of this Court of July 9, 1985 (Bar Matter No. 287) that are inconsistent herewith are hereby repealed or modified.

12. Special elections for the Board of Governors shall be held in the nine (9) IBP regions within three (3) months after the promulgation of the Court's resolution in this case. Within thirty (30) days thereafter, the Board of Governors shall meet at the IBP Central Office in Manila

to elect from among themselves the IBP national president and executive vice-president. In these special elections, the candidates in the election of the national officers held on June 3, 1989, particularly identified in Sub-Head 3 of this Resolution entitled "Formation of Tickets and Single Slates," as well as those identified in this Resolution as connected with any of the irregularities attendant upon that election, are ineligible and may not present themselves as candidate for any position.

13. **Pending such special elections, a caretaker board shall be appointed by the Court to administer the affairs of the IBP**.

The Court makes clear that the dispositions here made are without prejudice to its adoption in due time of such further and other measures as are warranted in the premises.

SO ORDERED. (Emphasis ours.)

Accordingly, to administer the affairs of the IBP pending the election of its national officers, the Court ordered the creation of the IBP *Caretaker Board*.[22] Immediately after its constitution, the IBP Caretaker Board conducted and administered the simultaneous election of Governors for each of the nine (9) IBP Regions.[23]

A week thereafter, the then newly-constituted IBP BOG ***directly elected*** *Atty. Eugene A. Tan (Atty. Tan), then IBP-WVR Governor*, as Acting IBP National President, to serve for the remainder of the supposed 1989-1991 term or from January 1990 to April 1991. The 1989-1991 term pertained to that of President Violeta Calvo-Drilon of Greater Manila Region. Elected with Atty. Tan was *Atty. Numeriano G. Tanopo, Jr. (Atty. Tanopo), the Governor from the IBP-Central Luzon Region, who was to assume the position of EVP-IBP* pursuant

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[22] Composed of former Justice Felix Q. Antonio, as Chairperson, and former Justices Efren I. Plana and Bienvenido Ejercito, as member, per *October 19, 1989 Resolution* of this Court.

[23] Selected members of the Judiciary were designated as Chairpersons and Members of the Board of Election Commissioners for each of the nine (9) IBP Regions, wherein Justice Reynato Puno (then of the Court of Appeals) was designated National Coordinator.

to paragraph 4 of the *fallo* of Bar Matter No. 491. When Atty. Tan resigned before the expiration of his term as IBP president, Atty. Tanopo became Acting President but eventually assumed the position of national president for the term 1991-1993 in accordance with the IBP By-Laws.

It is on the basis of these factual antecedents that IBP-SLR, through Atty. Joyas, insists that IBP-WVR was already represented and was given the opportunity to serve as IBP national president in the person of Atty. Tan. Hence, IBP SLR insists that IBP WVR is no longer qualified to vie for IBP EVP.

The *ponencia* of Justice Mendoza would sustain the position of IBP-SLR, a posture I am inclined to disagree with for the following reasons:

(1) The December 14, 2010 Resolution has already become final, immutable and unalterable.

Through their proposed intervention, IBP-SLR would like the Court to scuttle IBP-WVR's entitlement to field a candidate for IBP-EVP for the 2011-2013 term for the reason that the Special Committee erred when it failed to consider the election of Tan as temporary or interim IBP-president in l990. It may be conceded, for argument, that an error was committed by the Special Committee, but such error, if that be the case, was peremptorily adopted by the Court in its own final December 14, 20l0 Resolution.[24]

It is a fundamental legal principle that a final decision is immutable and unalterable, and may no longer be modified in any respect, whether it be made by the court that rendered it or by the highest court of the land.[25] Litigation must at some time end. Even at the risk of occasional errors, public policy

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[24] The following voted in favor of the December 14, 2010 Resolution: Former Chief Justice Renato C. Corona, Associate Justices Teresita J. Leonardo-De Castro, Arturo D. Brion, Lucas P. Bersamin, Roberto A. Abad, Martin S. Villarama, Jr. Jose Portugal Perez and Jose Catral Mendoza.

[25] *Sacdalan v. Court of Appeals*, *supra* note 17.

dictates that once a judgment becomes final, executory and unappealable, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Unjustified delay in the enforcement of a judgment sets to naught the role and purpose of the courts to resolve justiciable controversies with finality.[26]

As explained in *Aliviado v. Procter and Gamble,*[27] the doctrine of immutability of judgment is grounded on fundamental considerations of public policy and that adherence to said principle must be maintained by those who exercise the power of adjudication. The Court said that:

> It is a **hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect**, **even if the modification is meant to correct an erroneous conclusion of fact or law**, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.
>
> The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional errors, the judgment of adjudicating bodies must become final and executory on some definite date fixed by law. The Supreme Court reiterated that the doctrine of immutability of final judgment is adhered to by necessity notwithstanding occasional errors that may result thereby, since litigations must somehow come to an end for otherwise, it would even be more intolerable than the wrong and injustice it is designed to correct.

In *Mocorro, Jr. v. Ramirez,* we held that:

> A definitive final judgment, however erroneous, is no longer subject to change or revision.
>
> A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the

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[26] *Sps. Heber & Charlita Edillo v. Sps. Dulpina*, G.R. No. 188360, January 21, 2010, 610 SCRA 590, 602.

[27] G.R. No. 160506, June 6, 2011, 400 SCRA 650, 409-410.

> modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred." (Emphasis supplied.)

The doctrine of immutability of judgments protects the substantive rights of the winning party. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of the case. The Court expounded on this postulate in *Judge Angeles v. Hon. Gaite*:

> **The doctrine of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final on some definite date fixed by law.** [x x x]

In *Peña v. Government Service Insurance System* (G.R. No. 159520, September 19, 2006, 502 SCRA 383), we held that:

> x x x it is axiomatic that final and executory judgments can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, so also the winning party has the correlative right to enjoy the finality of the resolution of the case.

x x x x x x x x x

> The rule on finality of decisions, orders or resolutions of a judicial, quasi-judicial or administrative body is "*not a question of technicality but of substance and merit,*" the underlying consideration therefore, being the protection of the substantive rights of the winning party. Nothing is more settled in law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. (citing *Sacdalan v. Court of Appeals*, 428 SCRA 586, 599 (2004)[28] (Emphasis supplied.)

In *Banogon v. Zerna*,[29] the Court reminded litigants and lawyers that the time of the judiciary is too valuable to be wasted to evade the operation of a final decision. The Court explained, thus:

> Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.
>
> There should be a greater awareness on the part of litigants that the time of the judiciary, much more so of this Court, is too valuable to be wasted or frittered away by efforts, far from commendable, to evade the operation of a decision final and executory, especially so, where, as shown in this case, the clear and manifest absence of any right calling for vindication, is quite obvious and in-disputable.

The immutability of judgments doctrine, to be sure, admits of several exceptions, to wit: (1) correction of clerical errors; (2) *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision which render its

[28] G.R. No. 176596, March 23, 2011, 646 SCRA 309, 326-327.

[29] No. L-35469, October 9, 1987, 154 SCRA 593, 597.

execution unjust and inequitable.[30] The Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby.[31]

A careful review of the circumstances surrounding this case reveals that none of the foregoing exceptions warranting the relaxation of the doctrine of immutability of judgments or any circumstance analogous to the said exceptions is present in this case. Moreover, absolutely nothing transpired after the finality of the December 14, 2010 Resolution which would render its execution unjust and inequitable. It should, thus, be respected in its entirety.

(2) Atty. Tan's term should not be considered as the turn of IBP Western Visayas at the IBP leadership.

My reasons:

First, **Atty. Tan must be considered a mere *acting president*** who served during the *transition period* and *before* the actual implementation of the rules on *rotation by exclusion.*

This is clear under *Section 8 of Rule 139-A of the Rules of Court* which provides:

Section 8. *Vacancies*. — In the event the President is absent or unable to act, his duties shall be performed by the Executive Vice President; and in the event of the death, resignation, or removal of the President, the Executive Vice President shall serve as Acting President during the remainder of the term of the office thus vacated. In the event of the death, resignation, removal, or disability of both the President and the Executive Vice President, the Board of Governors shall elect an Acting President to hold office until the next succeeding election or during the period of disability.

[30] *Sacdalan v. Court of Appeals*, *supra* note 17.

[31] *Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, 632 SCRA 727, 761.

The filling of vacancies in the House of Delegates, Board of Governors, and all other positions of Officers of the Integrated Bar shall be as provided in the By-Laws. **Whenever the term of an office or position is for a fixed period, the person chosen to fill a vacancy therein shall serve only for the unexpired term.**

Corollary thereto, *Section 11 of the IBP By-Laws* likewise states:

Section 11. *Vacancies.* - Except as otherwise provided in these By-Laws, whenever the term of office or position, whether elective or appointive, is for a fixed period, **the person chosen to fill a vacancy therein shall serve only for the unexpired portion of the term.**

From the foregoing, it is clear that in case of vacancy in the position of the IBP President, the **person who shall act as Acting President** would only **serve during the remainder of the term.**

For instance, for the term 1985-1987, on March 1986, when then IBP President Simeon M. Valdez of Northern Luzon resigned in the middle of his term, then EVP Vicente D. Millora of IBP Central Luzon immediately served as *acting president* for the remainder of Atty. Valdez's term. When Atty. Millora also resigned in March 1987, or before the term ended, this writer, as then Governor for Southern Luzon, was elected by the BOG as acting President and assumed office in that capacity until the remainder of the term ending June 30, 1987. In all these cases, the tenure of Atty. Millora of Central Luzon and that of this writer representing Southern Luzon as acting IBP presidents were not considered a new term for their respective regions for the position of EVP. The term 1985-1987 was specifically the term for and was accordingly charged against Northern Luzon.

The precedent that obtained during the 1985-1987 term of Atty. Valdez finds application to the case at bar. Atty. Tan was elected to fill the vacancy which was supposedly for Atty. Drilon of Greater Manila Region for the 1989-1991 term and with the understanding that, pursuant to the Rules, Atty. Tan would only serve for the *unexpired portion of the 1989-1991*

term. In effect, Atty. Tan served as **Acting President** for the remainder **of a term which was *the turn of IBP Greater Manila Region*** from which Atty. Drilon belongs. After Atty. Tan resigned, EVP Tanopo of Central Luzon succeeded as Acting President pursuant to Section 8, Rule 139-A of the Rules until the end of Atty. Drilon's term on June 30, 1987. Thus, the tenure of Atty. Tan as Acting President for 1 year and 2 months during the 1989-1991 term of Atty. Drilon cannot in anyway be considered as the term of Western Visayas.

Furthermore, the remainder of the said term is **still part of the previous term** which, technically, is a term existing ***before*** Bar Matter 491 took into effect and, thus, ***prior*** to the full implementation of the rotation by exclusion scheme.

It must likewise be recalled that Atty. Tan's election as acting IBP national president was an *aftermath* of the nullification of the 1989 IBP elections, the subject matter of *Bar Matter No. 491*. At that time, there was a vacuum in the position of national president and the Court found it necessary to create a *Caretaker Board* to administer the affairs of the IBP until a new set of national officers shall have been elected.

Regardless of whether this case is an administrative matter or not, the doctrine of immutability of judgments should be applied. The public has to be sure the right to believe and feel secure that any decision or resolution of this Court will attain finality at some definite time. If this Court will just shun the doctrine because of this case being a "mere" administrative matter, then a dangerous precedent will be set and the public at large can no longer feel secure in whatever pronouncement this Court makes. In truth, administrative cases can and do affect a broad group of people. Example of this is the instant case and all other IBP-related matters previously discussed. Lawyers are members of the IBP and the result of this case will eventually have a large impact on how they will handle their current and future cases and how they will deal with and perceive this Court and other courts.

Since Atty. Tan became acting national president *by virtue of a special election* and *due to special circumstances,* Atty.

Tan must be considered an *interim* president who served during the *transition period* and *before* the actual implementation of the rules on *"rotation by exclusion"* for the EVP and *"automatic succession"* for the position of national president. Atty. Tan was elected as acting national president for the remainder of what would have been the 1989-1991 term of then president-elect Atty. Violeta C. Drilon of the Greater Manila Region because precisely there was no IBP president at that time.

Bar Matter No. 491 would also reveal that Atty. Tan's election as a *transition president* cannot be considered as an implementation of the rotation. *It is the election of Atty. Tanopo as EVP which must be considered as the beginning of the sequence* under the new rotation scheme for EVPs. The conclusion that the election of Atty. Tanopo as EVP started the rotation finds mooring in the very directive of this Court in par. 4 of the *fallo* in *Bar Matter No. 491*, which reads:

> The incoming board of governors shall then elect an Executive Vice President from among themselves. The position of Executive Vice President shall be rotated among the nine (9) IBP regions.

Analyzing the Court's disposition in that case, if this Court indeed meant that the election of Atty. Tan will be the beginning of the rotation, then *it could have so stated* and *could have limited the succeeding election of the EVPs to the other eight IBP Regions*, thus effectively excluding the IBP-WVR in the subsequent election for EVPs. The *fallo* does not say so and no interpretation is needed when the disposition of the Court is clear and unambiguous. This is further bolstered by the fact that during the elections for the 2005-2007 term, the IBP Board of Governors allowed the then Governor of IBP Western Visayas, Atty. J.B. Jovy C. Bernabe, to vie for the position of EVP. He eventually lost to Atty. Feliciano M. Bautista who was elected EVP for said term.

Second*, the *"rotation by exclusion" rule pertains in particular to the position of IBP-EVP,* NOT to the position of the *IBP Presidency.

In *Bar Matter No. 491*, this Court disposed:

4. At the end of the President's two-year term, the Executive Vice-President shall automatically succeed to the office of president. The incoming board of governors shall then elect an Executive Vice-President from among themselves. **The position of Executive Vice-President shall be rotated among the nine (9) IBP regions.** One who has served as president may not run for election as Executive Vice-President in a succeeding election until after the rotation of the presidency among the nine (9) regions shall have been completed; whereupon, the rotation shall begin anew.

Also, *Velez v. De Vera*,[32] penned by Justice Minita V. Chico-Nazario, enunciated that the rule on ***"rotation by exclusion" pertains in particular to the position of IBP-EVP*** and the ***IBP Presidency is merely a result of the automatic succession*** of the IBP-EVP to the Presidency, thus:

In Bar Matter 491, it is clear that **it is the position of IBP EVP which is actually rotated among the nine Regional Governors**. The rotation with respect to the Presidency is merely a result of the automatic succession rule of the IBP EVP to the Presidency. Thus, **the rotation rule pertains in particular to the position of IBP EVP**, while the **automatic succession rule pertains to the Presidency**. The rotation with respect to the **Presidency is but a consequence of the automatic succession rule** provided in Section 47 of the IBP By-Laws. (Emphasis supplied.)

Further echoing the foregoing pronouncements, this Court, in its **December 14, 2012 Resolution,** ordered:

4. The **proposed amendments** to Section 31, 33, par. (g), 39, 42 and 43, Article VI and **Section 47, Article VI of the IBP By-Laws** as contained in the **Report and Recommendation of the Special Committee dated July 9, 2009 are hereby *approved* and *adopted***. (Emphasis supplied.)

In relation thereto, the *Report and Recommendation of the Special Committee dated July 9, 2009* provides:

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[32] *Supra* note 1, at 398.

F. That in view of the fact that **the IBP no longer elects its President**, because the Executive Vice-President automatically succeeds the President at the end of his term, **Sec. 47, Article VII of the By-Laws should be amended** by **deleting the provision for the election of the President**. Moreover, for the strict implementation of the rotation rule, the Committee recommends that there should be a sanction for its violation, thus:

> Sec. 47. National Officer. – The Integrated Bar of the Philippines shall have a President, an Executive Vice President, and nine (9) Regional Governors. **The Executive Vice President shall be elected on a strict rotation basis by the Board of governors from among themselves**, by the vote of at least five (5) Governors. The Governors shall be *ex officio* Vice-President for their respective regions. There shall also be a Secretary and Treasurer of the Board of Governors.
>
> The violation of the rotation rule in any election shall be penalized by annulment of the election and disqualification of the offender from the election or appointment to any office in the IBP.

By virtue of the foregoing amendments, it is already an **established** rule that the "**rotation rule applies to the position of the IBP EVP**" and *NOT to the election of national president* because the EVP *merely assumes* the position of the national president after the latter's term has expired. It is, therefore, clear as day that the national president is not elected by the IBP Board of Governors under the *rotation by exclusion* rule, and, hence, does not participate in the rotation. Whatever is sometimes described as a "rotation of the presidency" actually means the rotation of the EVPs, which necessarily results in the rotation of the national presidents.

***Third*, to be considered a *complete turn* at the IBP Leadership, one must *first* be elected as EVP for the current term *before* he or she can serve as national president for the next term.**

With respect to the IBP Presidency, Section 47 of the IBP By-Laws provides the mandatory process of: **first**, *election of a Governor as EVP* and **second**, *automatic succession* to

the office of IBP president *after* serving as EVP for the immediately preceding term. This means that for ***a turn in the rotation* to be *complete*, one must *first* be elected as EVP for the current term *before* he or she can serve as national president for the next term.**

This process **must be satisfied *in strict sequence*** in order to consider that a specific IBP region had already *completed* its turn at the IBP leadership under the rotation by exclusion rule. As a consequence, under ordinary circumstances, a complete turn at IBP leadership is equivalent to *two years of service as EVP* for the immediately preceding term *plus* another *two years of service as IBP national president.*

Hence, following the same line of thought and considering that Atty. Tan of the WVR did not become EVP in the immediately preceding term before he assumed office as IBP president, the start of the sequence or rotation should be reckoned from the time Atty. Tanopo, then Governor of IBP Central Luzon, became EVP, and that the turn of IBP Central Luzon was *deemed completed* when Atty. Tanopo became national president in 1991-1993. This was aptly reflected in the July 2009 Report and Recommendations of the *Special Committee which deemed it appropriate to start the rotation with Atty. Tanopo* and *not* with Atty. Tan.

Apparently, ALL *of the other eight regions already had their complete turns at the IBP leadership* **except** for IBP-WVR. From the term of Atty. Tanopo until the present term of Atty. Libarios, *ALL of the eight regions* were given the opportunity to serve as *EVP during the immediately preceding term before they were able to assume office as IBP national president*.

This is, however, *not true* in the case of Atty. Tan ***as he was directly elected*** by the then IBP Board of Governors. **Atty. Tan was not elected as IBP-EVP** for the immediately preceding term before assuming office as IBP president and, in fact, **only IBP WVR has yet to have its turn for the IBP-EVP as a mandatory stepping stone to the IBP Presidency**.

In all, the IBP EVP-to-IBP Presidency route prescribed under the IBP By-Laws was not, in the case of Atty. Tan, accomplished. Hence, there is *no reason to conclude that IBP-Western Visayas had already completed its turn under the rotation by exclusion rule.* Since the other eight IBP regions have already completed their respective turns, **the preordained conclusion is that IBP-Western Visayas is the ninth region and, therefore, the only region left entitled to vie for EVP in the current rotation**.

Lastly, the IBP top leadership structure provides for a ***two-year stint for the EVP*** and ***another two years for the national president***.

From the context of **fairness** and under the objective of operationalizing the spirit and intention of the "rotation by exclusion rule" **to give each and every region a chance at the IBP leadership**, it would be **unfair** to consider Atty. Tan's tenure of just *one year and three months* as *equal* to the accumulated term of ***four years of service*** **which has already been accorded to all of the other eight regions**. The fact that Atty. Tan resigned while serving as interim IBP president is immaterial because *even if he did not resign, his tenure would still be less than two years* and, hence, less than the tenure *already* given to the other eight regions. This is clearly unfair for IBP-Western Visayas and definitely prejudicial to the interests of the lawyer-members of that region as it will be tantamount to deprivation of their right to elect an EVP, who will eventually become the regular national president.

Thus, fair play demands that **IBP-Western Visayas** be afforded no less than the opportunity to sit as IBP-EVP for the term 2011-2013 and as IBP president thereafter, ***before*** the position of the EVP may be made open to other regions.

(3) There is no reason to doubt the correctness of this Court's December 14, 20l0 Resolution.

As earlier adverted, the Court in its ***December 14, 2010 Resolution*** adopted the findings of the Special Committee created to investigate, analyze and make recommendations on *brewing*

controversies which tainted the 2009 IBP Elections. These findings, as contained in the committee's *Report and Recommendation,* are reproduced anew:

III. *Rulings of the Court*

x x x x x x x x x

In the conduct of the unified election of the incoming EVP, the following *findings and recommendations of the Committee shall be adopted*:

THE ROTATION OF THE PRESIDENCY AMONG THE REGIONS —

Sec. 47, Art. VII of the By-Laws, as amended by Bar Matter 491, Oct. 6, 1989, provides that the ***Executive Vice President shall be chosen by the Board of Governors from among the nine (9) regional governors. The Executive Vice President shall automatically become President for the next succeeding term.*** The Presidency shall rotate among the nine Regions.

The list of national presidents furnished the Special Committee by the IBP National Secretariat, shows that the governors of the following regions were President of the IBP during the past nine (9) terms (1991-2009):

Numeriano Tanopo, Jr.(Pangasinan)	**Central Luzon**	**1991-1993**
Mervin G. Encanto (Quezon City)	Greater Manila	1993-1995
Raul R. Anchangco (Makati)	Southern Luzon	1995-1997
Jose Aguila Grapilon (Biliran)	Eastern Visayas	1997-1999
Arthur D. Lim (Zambasulta)	Western Mindanao	1999-2001
Teofilo S. Pilando, Jr. (Kalinga Apayao)	Northern Luzon	2001-2003
Jose Anselmo L. Cadiz (Camarines Sur)	Bicolandia	2005-Aug. 2006
Jose Vicente B. Salazar (Albay)	Bicolandia	Aug. 2006-2007
Feliciano M. Bautista (Pangasinan)	Central Luzon	2007-2009

Only the Governors of the Western Visayas and Eastern Mindanao regions have not yet had their turn as Executive Vice President cum next IBP President, while Central Luzon and Bicolandia have had two (2) terms already.

Therefore, **either the governor of the Western Visayas Region, or the governor of the Eastern Mindanao Region should be elected as Executive Vice President for the 2009-2011 term**.

Accordingly, a special election shall be held by the present nine-man IBP Board of Governors to elect the EVP for the remainder of the term of 2009-2011, which shall be presided over and conducted by IBP Officer-in-Charge Justice Santiago Kapunan (Ret.) within seven (7) days from notice.[33] (Emphasis ours.)

From the foregoing, it is clear that the special election to be held by the IBP BOG is for the election of the EVP for the 2009-2011 term, and that *only the nominees of the IBP-WVR and IBP Eastern Mindanao were qualified to vie for the position of EVP*. As aptly observed by the Special Committee in its Report:

j. x x x **Inasmuch as for the past nine (9) terms, *i.e.*, since the 1991-1993 term, the nominees of the Western Visayas and Eastern Mindanao Regions have not yet been elected Executive Vice President of the IBP, the special election shall choose only between the nominees of these two (2) regions who shall become the Executive Vice President for the 2009-2011 term in accordance with the strict rotation rule.**[34] (Emphasis ours.)

Thus, the three-man Special Committee correctly concluded that "**the one who is not chosen for 2009-2011 term shall have its turn in the next 2011-2013 term**."

The *ponencia*, however, contends that the Special Committee in this Court's *December 14, 2010 Resolution* failed to take into account the *Velez* ruling and, in the process, committed two "inaccuracies," thus:

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[33] *In the Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines*, A.M. No. 09-5-2-SC, December 14, 2010, 638 SCRA 1, 27, 35-36.

[34] *Id.* at 15.

Apparently, the report of the Special Committee failed to take into account the ruling in *Velez* that the service of then EVP Leonard De Vera, representing the Eastern Mindanao region, **completed the first rotational cycle**.

Thus, it committed two inaccuracies. ***First***, it **erroneously reported** that "only governors of the Western Visayas and Eastern Mindanao regions have not yet had their turn as Executive Vice President." ***Second***, it **erroneously considered** Central Luzon and Bicolandia as having had two terms each in the First Rotational Cycle, when their second service was for the Second Rotational Cycle.

The unfortunate fact, however, is that the **erroneous statements of the Special Committee** were used as bases for the recommendation that "either the governor of the Western Visayas Region, or the government of the Eastern Mindanao Region should be elected as Executive Vice-President for the 2009-2011 term."

These conclusions were seconded by Justice Brion:

It is to be noted that, the **December 14, 2010 ruling itself has its imperfections** that deepened the deviations from the rotation system instead of setting the system right. For one, **it completely failed to take into account the Court's ruling in Velez.** Also, the Court **erroneously adopted the Special Committee's incomplete computation of the presidential rotational cycle.** Instead of counting the cycle from the presidency of Atty. Eugene Tan of Western Visayas in the 1989-1991 term as Bar Matter 491 dictated, the Court counted the rotation from the Central Luzon Presidency in the 1991-1993 term. This mistaken premise led the Court to conclude that only the Governors of Western Visayas and Eastern Mindanao regions had not yet had their turn as EVP so that the choice of EVP for 2009-2011 term should be solely confined to them. (Emphasis supplied)

Again, I beg to disagree. After a circumspect review of the antecedents that attended the controversies subject of these administrative matters, to my mind, **there was no mistake**, and hence, **I support the accuracy and correctness of the findings of the Special Committee, as adopted by the Court,** based on the following reasons:

First, as discussed earlier, Atty. Tan was elected as **ACTING PRESIDENT** who, as stated in Section 11 of the IBP By-

Laws[35] and Section 8 of Rule 139-A,[36] had served ***only for the unexpired portion*** of what could have been the term of Atty. Drilon, representing the IBP Greater Manila Region. To reiterate, Atty. Tan served only for the remainder **of a term which *should have been the turn of IBP Greater Manila Region*** from which Atty. Drilon belongs and not that of Western Visayas. It is likewise significant to note that the remainder of the said term is **still part of the previous term** which, technically, is a term existing ***before*** Bar Matter No. 491 took into effect and ***prior*** to the full implementation of the rotation by exclusion scheme.

To my mind, **it is correct and most logical for the Special Committee to exclude Atty. Tan's presidency as forming part of the rotational process and consider Atty. Tanopo's term as the beginning of the rotation.** This likewise bolsters the fact that Atty. Tan served only as an ACTING PRESIDENT in the interim until the new rule on rotation of EVPs is implemented. Hence, the Western Visayas Region has not yet been accorded the turn to elect its own EVP. Ergo, the Court and the Special Committee are correct in ruling that said region is given the right to elect its EVP either for the term 2009-2011 or the term 2011-2013.

And ***second***, that the Special Committee's Report is accurate would also find support in finding that, at that time, IBP Eastern Mindanao was also one of the only two remaining IBP regions eligible to field its candidate as EVP. Again, I now conclude that the Special Committee was correct in excluding the term of Atty. De Vera as a complete turn in favor of IBP Eastern Mindanao.

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[35] Section 11. *Vacancies*. - Except as otherwise provided in these By-Laws, whenever the term of office or position, whether elective or appointive, is for a fixed period, **the person chosen to fill a vacancy therein shall serve only for the unexpired portion of the term.**

[36] Section 8. *Vacancies*. — x x x Whenever the term of an office or position is for a fixed period, the person chosen to fill a vacancy therein **shall serve only for the unexpired term**.

For one, it was undisputed that Atty. Leonard De Vera, though elected as EVP, was removed from office and was not able to assume office as President. This, according to the Court in *Velez,* is an '*unfortunate' and 'supervening event'* which rendered it impossible for Atty. De Vera to assume the IBP Presidency. Thus, in view of the peculiarity of the circumstances surrounding the said removal, it is but fair for the Special Committee not to consider Atty. De Vera's term as a complete turn in favor of IBP Eastern Mindanao.

This is in consonance with the principle enunciated earlier that a turn in the IBP leadership would only be *complete* if the region *would have an EVP for the immediately preceding term and then later assume the position of IBP President.* Since Atty. De Vera was not able to assume the Presidency, his election cannot be considered as a complete turn in favor of IBP Eastern Mindanao. Again the Court and the Special Committee are correct in ruling that the Eastern Mindanao Region has the right to elect the EVP either for term 2009-2011 or the term 2011-2013. This paved the way for the election of Roan Libarios as EVP for the term 2009-2011.

As regards IBP-SLR, it completed its turn *not* when Atty. Vinluan became EVP for the 2009-2011 term because he was not able to assume presidency, *but* during the term when Raul Angangco became EVP for the term 1993-1995 and eventually assumed the IBP Presidency during the term 1995-1997 term. It is likewise for these reasons why IBP-SLR is, therefore, excluded and disqualified from running for the position of EVP for the term 2011-2013. Incidentally, *this also answers the third issue raised in this case*.

Pondering on this logic for inclusion and exclusion in the computation for purposes of the rotation, I find more reasons to adhere to the accuracy of the findings of the Special Committee. On a more important note, it cannot be over-emphasized that the *December 14, 2010 Resolution* was based on the Report of a Special Committee *specifically* commissioned to investigate, analyze and evaluate the *brewing controversies* and intricacies surrounding the IBP elections and the IBP itself. The Committee

had for its members retired Justices of the Court with unquestionable competence and knowledge on IBP rules and history and they arrived at their conclusion after receiving testimonies and pieces of evidence adduced by the parties and after a careful and thorough evaluation and calibration of the facts.

In his *ponencia*, Justice Mendoza asserts:

> That the Court, in its December 14, 2010 Resolution, ordered the election of the EVP-IBP for the next term **based on the inaccurate report of the Special Committee** is a fact. That cannot be erased. As a consequence thereof, Libarios of IBP Eastern Mindanao is now IBP President.[37] (Emphasis supplied)

Consequently, when the majority of the Court adopted the *ponencia* of Justice Mendoza, as seconded by Justice Brion, it will be etched in the history of this Court that, for the first time, **the Court admitted that it committed a enormous blunder or mistake of adopting the findings of the Special Committee** – a mistake which, to my mind, never existed at all.

Also, by succumbing to the view that the Special Committee committed a mistake in its report, and that this Court erred in adopting the same in its December 14, 2010 Resolution, **the Court, in effect, declared that the 2011-2013 term of Atty. Libarios of IBP Eastern Mindanao is null and void**. Inevitably, this Court, in ruling so, likewise declared that **all the acts of Atty. Libarios, in the exercise of his authority as IBP President, are likewise null and void** and, hence, without force and binding effect. *This is clearly an absurd situation.*

Hence, in view of the foregoing, I find that there is no reason to doubt, as does the *ponencia* and the Separate Opinion of Justice Brion, the correctness of the conclusions reached by the Special Committee.

Consequently, for the same reasons and considering the correctness and accuracy of the findings of the Special

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[37] Decision, p. 18.

Committee, it is my opinion that, contrary to the position of the *ponencia* on the second issue, ***the First Rotational Cycle is NOT yet done.***

This is further bolstered by the fact the specific portion of the *Velez* ruling relied upon by the *ponencia* can be considered effectively overturned by this Court's December 14, 2010 Resolution.

The Court's conclusion in *Velez* that "*the rotation was completed*" is, to me, correct in a sense. In fact, this was the position I took and was one of the issues I discussed in my Dissenting Opinion in the Court's *December 14, 2010 Resolution.* However, in the said resolution, the majority, headed by then Chief Justice Renato C. Corona and wholly concurred in by Justices Teresita J. Leonardo-De Castro, Arturo D. Brion, Lucas P. Bersamin, Roberto A. Abad, Martin S. Villarama, Jr., Jose Portugal Perez and member-in-charge Jose Catral Mendoza, decided to abandon this ruling in *Velez* and adopt the findings of the Special Committee. Hence, to my mind, pursuant to the principle that between two apparently conflicting decisions, the latter prevails, I find that this specific part of this Court's ruling in *Velez* had already been overturned. Accordingly, this Court's *December 14, 2010 Resolution* should govern.

It must be also noted that the Court predicated its *Velez* ruling on this consideration: that *"each of the nine IBP regions had already produced an EVP."* However, as the records and history of the IBP would reveal, during the time *Velez* was decided, ***NOT ALL*** of the nine IBP Regions had actually produced an EVP. By readily adopting the conclusion in *Velez* that "*the rotation was completed*," the *ponencia disregarded the truth* that, since Bar Matter No. 491 or the implementation of the rotation by exclusion scheme, **IBP Western Visayas never had an EVP.** Similar thereto, the *ponencia* likewise failed to recognize that this **was reflected** by this Court's *much later ruling* in its *December 14, 2010 Resolution*.

Nevertheless, whatever misinterpretations or misconceptions were created by *Velez,* these were *clarified* by this Court's

December 14, 2010 Resolution. In short, this Court had already corrected the situation.

Separate Opinion of Justice Brion

In this view, I also wish to address some of the points raised in the Separate Opinion of J. Arturo D. Brion, where he avers that the rulings of the Court in the *December 14, 2010 Resolution* were made in the exercise of the Court's administrative functions rather than its judicial or adjudicatory functions; that the aforementioned resolution was made in the exercise of the Court's power of supervision and not on the basis of its power of judicial review. Justice Brion also argues that being a continuing regulatory process, rulings of the Court issued under its supervisory power over the IBP are not cast in stone and remain open for review by the Court in light of prevailing circumstances as they develop.

In sum, the Separate Opinion insists that considering that the December 14, 2010 Resolution involves the Court's exercise of supervisory powers over the IBP and not judicial matters, the doctrine of immutability of judgments does not apply.

I beg to disagree.

To my mind, the exercise of the Court's supervisory power over the IBP and its members is two pronged – meaning, it is exercised either through the Court's *rule-making authority* or through its *adjudicatory or judicial power*. Indeed, one is distinct from the other. The Court's rule-making power is dynamic in the sense that the Court may change the rules concerning the IBP as it deems best, necessary, practical and appropriate under the circumstances. On the other hand, the decisions arising from the Court's *adjudicatory or judicial power* cannot be easily changed as they involve a *resolution of the contending rights of parties*, which policy dictates should attain finality and, at some point, must reach an end.

I am of the opinion that in its December 14, 2010 Resolution, this Court exercised its *adjudicatory functions* as the issues in that case necessarily involved a question of who among the IBP Regions and candidates are eligible to serve as IBP EVP

and National President and a determination of whether there is a necessity to impose disciplinary sanctions against some erring members and officers of the IBP.

As the title of the case would suggest, there were *"brewing controversies"* which required the exercise not only of the Court's supervisory powers over the IBP but also the Court's judicial power to settle actual case or controversies. By *controversy* means a disagreement or dispute, a litigated question, an adversary proceeding in a court of law, a civil action or suit either at law or in equity, a justiciable dispute.[38] It involves an antagonistic assertion of a legal right on one side and denial thereof on the other concerning a real, and not a mere theoretical question or issue.[39]

Verily, in the said Resolution, the Court ordered the amendments to Sections 31, 33 par. (g), 39, 42 and 43, Article VI and Section 47, Article VIII, pursuant to its *rule-making power*. However, these *were merely incidental to the Court's adjudication of the brewing controversies in the IBP.*

In this case, there is no question that actual controversies and concrete disputes were presented before the Court by factions with conflicting legal rights and interests pitted against each other, and demanding specific and conclusive reliefs. It must be remembered that these controversies originated from three (3) separate protests related to IBP elections held in April 2007 and an administrative complaint against erring officers and members. In particular, these protests were on: (1) the elections for the Governor of the IBP Greater Manila Region which involved the adverse interests of Atty. Elpidio Soriano and Atty. Manuel M. Maramba; (2) the elections for the Governor of the IBP Western Visayas which involved the adverse interests of Atty. Cornelio P. Aldon and Atty. Benjamin Ortega on the one hand, and Atty. Erwin Fortunato on the other; and (3) the elections for Governor of IBP Western Mindanao which

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[38] *BLACK'S LAW DICTIONARY* 379 (9th ed., 2009).

[39] *Philippine Airlines, Inc. v. NLRC*, G.R. No. 120567, March 20, 1998, 287 SCRA 672.

involved the adverse interests of Atty. Benjamin B. Lanto and Atty. Nasser Marohomsalic. On the other hand, the administrative case was filed by Attys. Marcial M. Magsino, Manuel M. Maramba and Nasser A. Marohmsalic against Attys. Rogelio A. Vinluan, Evergisto S. Escalon, Bonifacio T. Barandon, Jr., Abelardo C. Estrada, and Raymund Jorge A. Mercado for professional misconduct, violation of attorney's oath and acts inimical to the IBP.

Needless to say, the foregoing cases involve assertions of legal rights of individuals in relation to crucial elective positions in the IBP on one side and denials thereof on the other. In resolving these warring interests, the Court had to evaluate and examine facts, interpret the rules governing the IBP, its members and officers, recall and study the IBP's history and structure, consider the report and recommendation of the Special Committee and rule on the rights and interests of the IBP regions and concerned IBP officials and members – all of which were done by the Court not only as an act of supervision over the IBP but, most importantly, to resolve the disputes among the parties. Thus, as far as these issues have been settled and resolved by the Court, they became final and no longer subject to review.

Also, the view set forth in the Separate Opinion to the effect that decisions of the Court in relation to its supervision over the IBP is still subject to review and change is ***unsettling***. If this is true, then what will prevent the Court from setting aside or amending a decision for or against a member of the bar or a decision settling disputes as regards IBP election controversies which were rendered ten or twenty years ago? Does this mean that the Court may thereafter overturn itself and find Atty. Vinluan innocent of the accusations against him and declare him actually fit to hold the position of IBP President for the 2007-2009 term? Further, following the conclusions in the Separate Opinion, may this Court, at any time, change its ruling in Bar Matter 491 rendered in 1989? That issues like these will remain open for review by the Court, as insisted by the Separate Opinion, is, to my view, extremely disturbing.

Moreover, in order to bolster the argument that rulings of the Court issued under its supervisory power over the IBP remain open to review, the Separate Opinion cites that administrative matters involving violations of ethical standards may be reviewed by the Court even years after the promulgation of the decision or resolution upon a petition for clemency by the respondent. Further, said Opinion posits that there were cases when the Court has changed its rulings in administrative matters in instances where there was proof that the petitioner has reformed or suffered enough on account of his or her unethical conduct.

I find the foregoing analogy *misplaced*.

Cases calling for the exercise of this Court's disciplinary powers over lawyers and judges belong to a separate genre. Once the Court renders a decision in a disciplinary action against a member of the bar, such member is either suspended, disbarred or disciplined by some other means after the said decision becomes final and executory upon the lapse of the reglementary period for appeal or reconsideration. *That the Court may thereafter mitigate the sanction imposed or grant clemency or reprieve to the erring bar member does not mean that the decision finding him or her administratively liable did not become final and executory*.

The mitigation or grant of clemency does not mean that the Court is changing its decision finding the bar member liable, rather it is an act of liberality and generosity on the part of the Court upon a showing of reformation of the petitioner. The mitigation of the sanction imposed or the grant of clemency by the Court is *a matter or an issue entirely different* from the issues involved in the administrative case finding the lawyer or judge liable. In a petition for clemency, the petitioner actually admits the unethical behavior committed in the past and prays for the pardon of the Court based on facts and circumstances entirely different from his defenses in the administrative case and which surface way long after the decision is rendered. In

fact, one of the requisites for a grant of judicial clemency or pardon is that there should be a final judgment.

Thus, it is not true those administrative matters involving cases for unethical behavior of members of the bar do not become final and executory and that the doctrine of immutability of judgment does not apply to the same. Rather, the Court in effect affirms its decision but extends its liberality in exceptional circumstances where there is proof that the erring bar member has changed his or her ways or has suffered enough from the consequences of the sanctions imposed.

In view thereof, the doctrine of immutability of judgments clearly applies to this Court's December 14, 2010 Resolution.

Conclusion

It must be recalled that in the 2006 *Velez* case, this Court has ruled that the rotation was already completed. However, in its, December 14, 2010 Resolution, this Court deviated from *Velez* and declared that *only* IBP Eastern Mindanao and Western Visayas have not had their turn at the IBP leadership. Thus, the Court ruled that the rotation after all has not yet been completed contrary to the ruling in *Velez.*

And now, **after the December 14, 2010 Resolution had been become final in February 2011 and partially executed, wherein *IBP Eastern Mindanao had already given and completed its turn,* the *majority* reverted to the *Velez* ruling that the rotation is already complete**; effectively depriving IBP Western Visayas of its clearly stated right pursuant to the December 14, 2010 Resolution. Verily, by following the opinion of the *ponencia*, the Court is now exposed, once again, to charges of FLIP-FLOPPING.

Because of the position now assumed by the majority, the Court would appear to be TRIFLING with the long-settled doctrine of immutability of judgments. In the process, all the final decisions of the Court from its birth up to the present would be amenable to another review and reversal. It opened

a Pandora's box, and thus, permit the parties and worse, even non-parties, in final and executed cases, to pray for the reopening of literally hundreds of thousands of final and fully implemented decisions on the pretext that this Court has committed an ERROR in or has MISREAD said cases.

In its Resolution, the majority nullified and disregarded a critical part of the December 14, 2010 Resolution. In a departure from its former holding, *the majority now rules that the IBP-Western Visayas is not the only region that can vie for IBP-EVP for the 2011-2013 term and* ***that position of IBP EVP is now open to all regions***. This is a **nullification** of the **unequivocal December 14, 20l0 Resolution** that "*only IBP Eastern Mindanao and IBP Western Visayas are qualified to vie for the EVP position*" in the two remaining terms in the rotation.

In retrospect, the Western Visayas Region was already deprived of its right to have an elected EVP who will eventually assume the IBP Presidency from 1990 when the rotation of the EVP started up to the present time or for more than THIRTY YEARS. With the new cycle, said region may even have to wait for 18 years more which is the total period for a new cycle before it can elect its EVP. All in all, the damage and prejudice to the members of the Western Visayas Region are unquantifiable.

More importantly, by declaring the EVP position open, the majority takes a sudden, but aberrant, turn around and ruled against the final and partially executed December 14, 2010 Resolution by correcting alleged MISTAKES in said judgment. *This is a first.*

One can only imagine the possible irreparable damage and prejudice to the Court and the judicial institution by the rendition of what will be undoubtedly perceived as an amendment to the core of what has been a final and partly executed judgment. The December 14, 2010 Resolution is a fairly recent issuance. The integrity of the Court and the stability of its decisions shall be under attack and scrutiny once again due to the majority's admission that this Court committed mistakes in rendering the

December 14, 2010 Resolutions. This will be deeply unsettling and will prejudice the stability and reliability of final judgments of the Court.

To repeat, the essence of the principle of immutability of final judgments is that "once a judgment becomes final, it may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of law and fact."

The members of the Court must strongly adhere to and respect its final and executed decisions. To expose the decisions of this Court to the risk of being reopened or set aside any time would simply make the decisions of this Court a mockery and a farce. If the Court itself will resurrect final and executed decisions, then who and what will stop parties and non-parties from following suit? The potential damage to the institution is unthinkable.

Thus, I vote to deny the motion of IBP-SLR for lack of merit.

EN BANC

[A.M. No. P-08-2531. April 11, 2013]
(Formerly A.M. No. 08-7-220-MTCC)

CIVIL SERVICE COMMISSION, *complainant, vs.* **MERLE RAMONEDA-PITA, Clerk III, Municipal Trial Court in Cities, Danao City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; HAS THE SOLE POWER TO OVERSEE THE JUDGES' AND COURT PERSONNEL'S ADMINISTRATIVE COMPLIANCE WITH ALL LAWS, RULES AND

REGULATIONS; EXCEPTION PRESENT IN CASE AT BAR.— We have always maintained that it is only the Supreme Court that can oversee the judges' and court personnel's administrative compliance with all laws, rules and regulations. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers. However, as aptly pointed out by the OCA, Ramoneda-Pita was afforded the full protection of the law, that is, afforded due process. She was able to file several affidavits and pleadings before the CSC with counsel. It may also be noted that the case had been elevated to the Court of Appeals and this Court, where the Resolution of the CSC was upheld in both instances. x x x In any event, the OCA had asked Ramoneda-Pita to comment on the matter. She was therefore given due notice and fair hearing. It is noteworthy that she only rehashed the arguments that she raised before the CSC proceedings.

2. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; DISHONESTY; ESTABLISHED IN CASE AT BAR.— A careful review of the documents submitted before the CSC and a perusal of its investigation reports in the present case, convince us that Ramoneda-Pita was not the one who took the Civil Service Sub-Professional Examinations conducted on July 26, 1987. Specimen signatures in the various PDS she had submitted over the years to the Court do not resemble the signature which appeared in the seat plan of the CSC. Moreover, no substantive evidence was presented by Ramoneda-Pita to bolster her defense that she was not able to develop a settled signature. Nor did she substantiate her claim that the difference between the pictures in the PSP and the PDS is due to the aging process.

3. ID.; ID.; ID.; ID.; SHOULD HOLD THE HIGHEST STANDARD OF INTEGRITY FOR THEY ARE A REFLECTION OF THE ESTEEMED INSTITUTION WHICH THEY SERVE.— This Court cannot stress enough that its employees should hold the highest standard of integrity for they are a reflection of this esteemed institution which they serve. It certainly cannot countenance any form of dishonesty perpetrated by its employees. x x x In this case, Ramoneda-Pita's length of service in the judiciary is inconsequential. The CSC's discovery of the perfidy in her acquisition of her civil service eligibility and her insistence in stating that she is civil service eligible in her PDS when she

had been already found guilty of an administrative charge even after the finality of the CSC Resolution and even after her seeking clemency tell this Court that Ramoneda-Pita has not and does not live up to the high standards demanded of a court employee. As the Court has previously stated it will not hesitate to rid the ranks of undesirables.

D E C I S I O N

***PER CURIAM*:**

This administrative case arose from a letter[1] dated June 23, 2006 by Director David E. Cabanag, Jr. of the Civil Service Commission (CSC) Regional Office No. VII calling the attention of the Office of the Court Administrator (OCA) to the continued employment of Merle Ramoneda-Pita (Ramoneda-Pita) as Clerk III of the Municipal Trial Court in Cities (MTCC), Danao City. It informed the OCA that in CSC Resolution No. 010263[2] dated January 26, 2001, Ramoneda-Pita was found guilty of dishonesty and dismissed from the service. As accessory penalties, she was perpetually barred from joining government service and her civil service eligibility was revoked. However, Ramoneda-Pita did not declare her ineligibility when she stated in her Personnel Data Sheet (PDS)[3] dated June 14, 2005 that she had never been involved in any administrative case and that she was civil service eligible.

The antecedent facts follow.

On March 23, 1998, an anonymous letter[4] informed the CSC of an alleged irregularity in the civil service eligibility of Ramoneda-Pita. The letter stated that the irregularity concerned Ramoneda-

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[1] *Rollo*, pp. 7-8.

[2] *Id.* at 17-21. Entitled *Re: Dishonesty*. Signed by Commissioner Jose F. Erestain, Jr., Chairman Corazon Alma G. de Leon and Commissioner J. Waldemar V. Valmores and attested by Director III Ariel G. Ronquillo.

[3] *Id.* at 23-24.

[4] *Id.* at 249.

Pita's taking of the Career Service Sub-Professional Examination held in Cebu City on July 26, 1987.

The CSC retrieved the records for the July 26, 1987 examinations and compared the pictures and signatures of Ramoneda-Pita as they appeared in the Picture Seat Plan (PSP) for the exam and her PDS dated October 17, 1990. As the pictures and signatures did not match, the CSC required Ramoneda-Pita to explain why it seemed that another person took the civil service examination on her behalf.

Ramoneda-Pita denied that someone else took the civil service examinations in her stead. She averred that she took the civil service examinations on July 30, 1986 and not July 26, 1987. She explained that there were dissimilarities in the pictures in the PSP and the PDS because these were not taken on the same year and might have deteriorated in quality over the years. On the other hand, she accounted for the difference in her signatures to her low educational attainment leading to her non-development and non-maintenance of a usual signature.[5]

In its Investigation Report[6] dated May 3, 1999, the CSC made the following observations and recommendation:

> The person who actually took the Career Service Subprofessional Examination on July 26, 1987 in Cebu City, was the "Merle C. Ramoneda" whose picture and signature were affixed in the Admission Slip/Notice of Admission and in the Picture Seat Plan, is NOT the "Merle C. Ramoneda" whose picture and signature appear in the Personal Data Sheet dated October 17, 19[9]0 of the real Merle C. Ramoneda.
>
> In view of the foregoing, considering that the evidence presented [is] substantial, it is recommended that respondent Merle C. Ramoneda be adjudged guilty of the charges and meted the penalty of dismissal with all its accessories.[7]

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[5] *Id.* at 250.

[6] *Id.* at 262-272; signed by Director IV Jesse J. Caberoy.

[7] *Id.* at 272.

Thus, the CSC issued Resolution No. 010263 dated January 26, 2001 finding Ramoneda-Pita guilty of dishonesty, the dispositive portion of which reads as follows:

> **WHEREFORE**, the Commission hereby finds Merle C. Ramoneda guilty of the offense of Dishonesty. Accordingly, the penalty of dismissal from the service with all its accessory penalties is imposed.
>
> Since the respondent is not in the government service, the penalty of dismissal is deemed implemented. She is also perpetually barred from entering the government service and from taking any civil service examination in the future. Her Civil Service Sub-Professional Eligibility is likewise revoked.
>
> Let a copy of this Resolution be furnished the Office of the Ombudsman-Visayas for whatever legal action it may take under the premises.[8]

Ramoneda-Pita moved for reconsideration but the CSC denied it in Resolution No. 010880[9] dated May 3, 2001.

Ramoneda-Pita appealed CSC Resolution Nos. 010263 and 010880 to the Court of Appeals and, subsequently, to this Court. In both instances, her appeal was denied.[10]

On January 14, 2005, Ramoneda-Pita wrote to then President Gloria Macapagal-Arroyo appealing for clemency stating that she accepted her fate and turned a new leaf with a solemn commitment to do good for the rest of her life. The Office of the President referred the matter to Director David Cabanag, Jr. of the CSC Regional Office No. VII for validation, verification and investigation.[11]

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[8] *Id.* at 21.

[9] *Id.* at 122-124. Signed by Commissioner Jose F. Erestain, Jr., Chairman Karina Constantino-David and Commissioner J. Waldemar V. Valmores.

[10] *Id.* at 61-72; OCA Memorandum dated February 19. 2009, citing Court of Appeals Decision dated December 29, 2003 and SC Resolutions dated July 27, 2004 and November 9, 2004 in G.R. No. 164200.

[11] *Id.* at 64.

While the appeal for clemency was pending and in the course of the CSC's investigation, the CSC discovered that, again, Ramoneda-Pita had been declaring in her PDS, particularly the PDS dated June 14, 2005 submitted to the Supreme Court, that she had not been found guilty in any administrative case and that she was civil service eligible.[12]

Thus, on May 11, 2006, the CSC, in its Investigation Report[13] pursuant to the Office of the President's referral, found that Ramoneda-Pita had not sufficiently established moral reformation which is crucial in the grant of executive clemency. It recommended that the plea for executive clemency be denied.

On June 23, 2006, Director Cabanag, Jr. wrote a letter to the OCA informing it of the continued employment of Ramoneda-Pita as Clerk III of the MTCC, Danao City despite the finality of CSC Resolution No. 010263.

On August 18, 2006, the OCA required Ramoneda-Pita to submit her comment within fifteen (15) days.

In her Comment dated September 7, 2006, Ramoneda-Pita asserted that she never concealed that she had been previously found guilty of dishonesty. She claimed that her immediate supervisor, Judge Manuel D. Patalinghug, was furnished a copy of CSC Resolution No. 010263. She admitted having filed request for executive clemency with the Office of the President. In connection to this, she said that the CSC directed her to submit some documents needed for its processing. She explained that she made the entries in her June 14, 2005 PDS because she wanted to be consistent in her statements in her previous PDS and, considering her low education, she just copied the data entries contained in her earlier PDS. She said that it was never her intention to falsify the PDS and she did not understand the legal implications. She prayed for the Court's understanding and cited her good record during her years of service.

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[12] *Id.*

[13] *Id.* at 476-479.

In its Report[14] dated July 4, 2008, the OCA recommended, among others, that the case be docketed as a regular administrative matter and that this Court conduct its own investigation on the matter.

This Court noted and adopted the recommendation of the OCA in a Resolution[15] dated August 6, 2008 where it directed the OCA to conduct its own investigation on the matter and submit a report and recommendation thereon.

Thus, this administrative case.

In its Memorandum[16] dated February 19, 2009, the OCA recommended Ramoneda-Pita's dismissal from the service. It found that Ramoneda-Pita fully participated in the proceedings before the CSC never once questioning its jurisdiction. It stated:

> In the instant case, respondent Ramoneda-Pita, who never even questioned the jurisdiction of the CSC, fully participated in the proceedings before the CSC. Although she was not yet a Supreme Court employee when the CSC instituted the case against her, she had already become a member of the judiciary when Resolution No. 01-0263 dated January 26, 2001 finding her guilty and meting her the penalty of dismissal was issued - having been appointed by the Court to her present position on July 24, 2000. Her motion for reconsideration of the CSC Resolution was denied. The respondent then filed a petition for review before the Court of Appeals which affirmed the same Resolution. A petition for review on *certiorari* under Rule 45 was filed with the Supreme Court which in its Resolution dated August 24, 2004 found no reversible error in the challenged decision of the Court of Appeals to warrant the exercise by the Court of its discretionary appellate jurisdiction in the case. Taking into consideration the pronouncement in the Ampong case, we believe that with all the more reason the doctrine of estoppel should thus be considered applicable in the instant case as the respondent went all the way to the Supreme Court to question the CSC Resolution. In addition, the Court itself has even ruled on the case, effectively

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[14] *Id.* at 1-5. Signed by Court Administrator Zenaida N. Elepaño and Deputy Court Administrator Antonio H. Dujua.

[15] *Id.* at 57-58.

[16] *Id.* at 61-72.

upholding CSC Resolution No. 01-0263 when it explicitly stated that ***in any event, the petition would still be denied for failure thereof to sufficiently show that the public respondent committed any reversible error in the challenged decision as to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case.***

x x x x x x x x x

There lies the question as to how should respondent then be proceeded against with respect to her employment in the [J]udiciary. We deem that we cannot just implement CSC Resolution No. 01-0263 and dismiss the respondent outright. The Court still maintains its administrative jurisdiction over the respondent and should therefore have the final determination of her administrative liability.

Considering, however, that the CSC had already conducted both fact-finding and formal investigations, we find no reason why the Court should replicate what the CSC had done more ably.[17]

In support of its conclusion, the OCA cited *Ampong v. Civil Service Commission, CSC-Regional Office No. 11*[18] among others. Said the OCA:

The standard procedure is for the CSC to bring its complaint against a judicial employee before the Supreme Court through the OCA as shown in several cases. The Court, however, has made exceptions in certain cases. In the very recent case of Ampong, the Court, although it declared that it had administrative jurisdiction over the petitioner, nevertheless upheld the ruling of the CSC based on the principle of estoppel. In the said case, petitioner Ampong, a court interpreter at the time the CSC instituted administrative proceedings against her, questioned the jurisdiction of the CSC after it found her guilty of dishonesty in surreptitiously taking the CSC-supervised Professional Board Examination for Teachers (PBET) in 1991 in place of another person and dismissed her from the service. The Court denied the petition on the ground that the previous actions of petitioner estopped her from attacking the jurisdiction of the CSC which had accorded her due process.[19] (Citations omitted.)

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[17] *Id.* at 66-67.

[18] G.R. No. 167916, August 26, 2008, 563 SCRA 293.

[19] *Rollo*, p. 66.

The OCA then proceeded to discuss the merits of Ramoneda-Pita's contention. It noted Ramoneda-Pita's claim that her physical appearance changed over the intervening years since she took the Civil Service Sub-Professional Examinations. She also posed the possibility that the picture quality had deteriorated over time. In addition, she also claims that the examiner must have interchanged her picture with someone else as he was the one who pasted the pictures to the seat plan.

However, the OCA seriously doubted the validity of Ramoneda-Pita's claim saying:

> We do not think that a mere three-year gap would bring about drastic changes in a person's appearance. Besides, the respondent failed to substantiate her claims. She could have easily submitted additional evidence, such as pictures to show the gradual change in her appearance through the three-year period.[20]

On the confusion with respect to the pictures, the OCA said that it was not "likely due to the strict procedure followed during civil service examinations x x x."[21] Moreover, the OCA stated:

> The presentation of various explanations and conjectures show the inconsistent stands taken by the respondent. She insists that the picture in the seat plan was her and that her physical appearance has changed over the years, yet in the same breath argues that the examiner must have interchanged her picture with the pictures of other examinees.
>
> The same inconsistency is manifest in all her records. Upon the Court's resolution of her petition for review on *certiorari*, the respondent states in her letter dated January 14, 2005 addressed to President Arroyo that she fought hard to prove her innocence but had accepted her fate and **mistake, with the solemn commitment that she would never commit the same or similar mistake for the rest of her life.** x x x.
>
> x x x x x x x x x
>
> The respondent has a string of dishonest acts which started when she had somebody impersonate her in taking the Civil Service

[20] *Id.* at 69.

[21] *Id.*

Subprofessional examination. Upon the discovery of her deception, she embarked on a series of prevarications to cover it up, the most notable of which is the Personal Data Sheet dated April 5, 2000 she submitted to the Court as one of the supporting documents for her appointment to the judiciary. In the Personal Data Sheet, item no. 25 asks "Do you have any pending administrative case?" while item no. 27 queries "Have you ever been convicted of any administrative offense?" The respondent answered "no" to both questions. It must be remembered that at the time she filled out the Personal Data Sheet, she already had a pending administrative case, the CSC having already filed its formal charge on September 7, 1998. Her fraudulent answers had been instrumental in the unquestioned approval of her appointment because had she answered truthfully the Court would have been alerted to her pending administrative case with the CSC and would have surely withheld, if not denied, her appointment.

Taking judicial notice of the fact-finding and formal investigations conducted by the CSC relative to the impersonation case of the respondent and given the observations on her subsequent actuations which were predisposed to deceive, we find that the respondent, is indeed, guilty of dishonesty and falsification of document.[22]

The OCA thus recommended:

In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the recommendation that respondent Merle Ramoneda-Pita, Clerk III, Municipal Trial Court in Cities, Danao City, be found **GUILTY** of Dishonesty and Falsification of Official Document and be **DISMISSED** from the service with forfeiture of all her retirement benefits, except the value of her accrued leaves, if any, and with prejudice to re-employment in the government or any of its subdivisions, instrumentalities or agencies including government-owned or controlled corporations.[23]

We note and adopt the recommendation of the OCA.

As a preliminary matter, we address the matter of propriety of the proceedings against Ramoneda-Pita in the CSC.

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[22] *Id.* at 70-71.

[23] *Id.* at 72.

We have always maintained that it is only the Supreme Court that can oversee the judges' and court personnel's administrative compliance with all laws, rules and regulations. No other branch of government may intrude into this power, without running afoul of the doctrine of separation of powers.[24] However, as aptly pointed out by the OCA, Ramoneda-Pita was afforded the full protection of the law, that is, afforded due process. She was able to file several affidavits and pleadings before the CSC with counsel. It may also be noted that the case had been elevated to the Court of Appeals and this Court, where the Resolution of the CSC was upheld in both instances.

The OCA's reliance in *Ampong v. Civil Service Commission* is well taken. As we have stated in *Civil Service Commission v. Andal:*[25]

> In *Ampong*, petitioner in that case admitted her guilt. She voluntarily went to the CSC regional office, admitted to the charges leveled against her and waived her right to the assistance of counsel. She was given ample opportunity to present her side and adduce evidence in her defense before the CSC. She filed her answer to the charges against her and even moved for a reconsideration of the adverse ruling of the CSC. **In short, Ampong did not question the authority of the CSC and, in fact, actively participated in the proceedings before it.**
>
> In the present case, while respondent may have filed his Answer to the formal charge of dishonesty after having been directed to do so, he denied having taken the civil service examination and did not even appear at the formal investigation conducted by the CSC-NCR. He appealed to the CSC after the adverse decision of the CSC-NCR was rendered but raised the issue of lack of jurisdiction over his person. He argued that as an employee in the Judiciary, "the jurisdiction to hear disciplinary action against him vests with the Sandiganbayan or the Supreme Court." It cannot therefore be said that he was estopped from assailing the jurisdiction of the CSC.
>
> This notwithstanding, **we reiterate that we will not and cannot tolerate dishonesty for the judiciary expects the highest standard**

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[24] *Civil Service Commission v. Andal*, G.R. No. 185749, December 16, 2009, 608 SCRA 370, 377.

[25] *Id.* at 378.

of integrity from all its employees. The conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with a heavy burden or responsibility. The Court will not hesitate to rid its ranks of undesirables. (Citations omitted; emphases ours.)

In any event, the OCA had asked Ramoneda-Pita to comment on the matter. She was therefore given due notice and fair hearing. It is noteworthy that she only rehashed the arguments that she raised before the CSC proceedings.

We now proceed to the substantive aspect of the case.

This Court has defined dishonesty in *Civil Service Commission v. Perocho, Jr.*[26] as:

[I]ntentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. Thus, dishonesty, like bad faith, is not simply bad judgment or negligence. Dishonesty is a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment. (Citations omitted.)

We have previously dealt with cases with a marked resemblance to the present case.

In *Civil Service Commission v. Sta. Ana*,[27] we found sufficient basis to dismiss a court stenographer for misrepresenting herself to have passed the Career Service Professional Examination Computer Assisted Test (CAT) when she had somebody else take the exam for her. The CSC undertook to compare the respondent's PDS with the CAT application and the Picture

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[26] A.M. No. P-05-1985, July 26, 2007, 528 SCRA 171, 179.

[27] 450 Phil. 59 (2003).

Seat Plan of the examinations and found them to be different.

In *Civil Service Commission v. Dasco*,[28] we found Ms. Caridad S. Dasco guilty of dishonesty and consequently dismissed her from the service for having someone else take the requisite Civil Service Examinations in her stead. It was found that her picture in the CSC's PSP had a marked difference from her PDS.

In *Office of the Court Administrator v. Bermejo*,[29] we dismissed Ms. Lourdes Bermejo for having another person impersonate her at the Civil Service Examinations.

A careful review of the documents submitted before the CSC and a perusal of its investigation reports in the present case, convince us that Ramoneda-Pita was not the one who took the Civil Service Sub-Professional Examinations conducted on July 26, 1987. Specimen signatures in the various PDS she had submitted over the years to the Court do not resemble the signature which appeared in the seat plan of the CSC. Moreover, no substantive evidence was presented by Ramoneda-Pita to bolster her defense that she was not able to develop a settled signature. Nor did she substantiate her claim that the difference between the pictures in the PSP and the PDS is due to the aging process.

This Court cannot stress enough that its employees should hold the highest standard of integrity for they are a reflection of this esteemed institution which they serve. It certainly cannot countenance any form of dishonesty perpetrated by its employees. As we have stated in the Code of Conduct for Court Personnel:[30]

> WHEREAS, **court personnel, from the lowliest employee** to the clerk of court or any position lower than that of a judge or justice, **are involved in the dispensation of justice**, and parties seeking redress from the courts for grievances look upon court personnel as part of the Judiciary.

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[28] A.M. No. P-07-2335, September 22, 2008, 566 SCRA 114.

[29] A.M. No. P-05-2004, March 14, 2008, 548 SCRA 219.

[30] A.M. No. 03-06-13-SC, June 1, 2004.

WHEREAS, in performing their duties and responsibilities, **court personnel serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it**. (Emphases supplied.)

In this case, Ramoneda-Pita's length of service in the judiciary is inconsequential. The CSC's discovery of the perfidy in her acquisition of her civil service eligibility and her insistence in stating that she is civil service eligible in her PDS when she had been already found guilty of an administrative charge even after the finality of the CSC Resolution and even after her seeking clemency tell this Court that Ramoneda-Pita has not and does not live up to the high standards demanded of a court employee. As the Court has previously stated it will not hesitate to rid the ranks of undesirables.[31]

WHEREFORE, Merle C. Ramoneda-Pita is hereby found **GUILTY** of dishonesty. She is **DISMISSED** from the service with forfeiture of all her retirement benefits, except the value of her accrued leave credits, if any, and with prejudice to re-employment in the government or any of its subdivisions, instrumentalities or agencies including government-owned and controlled corporations. Let a copy of this Decision be attached to her records with this Court.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Velasco, Jr., J., no part due to relation to party.

Perez, J., no part. Acted on matter as Court Administrator.

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[31] *Civil Service Commission v. Andal, supra* note 24.

EN BANC

[G.R. No. 174788. April 11, 2013]

THE SPECIAL AUDIT TEAM, COMMISSION ON AUDIT, *petitioners, vs.* **COURT OF APPEALS and GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*, PROHIBITION AND *MANDAMUS*; CAN BE RESORTED TO WHEN NO APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IS AVAILABLE; EXCEPTIONS.— A rule of thumb for every petition brought under Rule 65 is the unavailability of an appeal or any "plain, speedy, and adequate remedy." *Certiorari*, prohibition, and *mandamus* are extraordinary remedies that historically require extraordinary facts to be shown in order to correct errors of jurisdiction. The law also dictates the necessary steps before an extraordinary remedy may be issued. To be sure, the availability of other remedies does not always lend itself to the impropriety of a Rule 65 petition. If, for instance, the remedy is insufficient or would be proven useless, then the petition will be given due course. x x x COA itself has a mechanism for parties who are aggrieved by its actions and are seeking redress directly from the commission itself. x x x This discussion of the different procedures in place clearly shows that an administrative remedy was indeed available. To allow a premature invocation of Rule 65 would subvert these administrative provisions, unless they fall under the established exceptions to the general rule, some of which are as follows: 1) when the question raised is purely legal; 2) when the administrative body is in estoppel; 3) when the act complained of is patently illegal; 4)when there is urgent need for judicial intervention; 5)when the claim involved is small; 6) when irreparable damage will be suffered; 7) when there is no other plain, speedy and adequate remedy; 8) when strong public interest is involved; 9) when the subject of the controversy is private land; 10) in *quo warranto* proceedings.

2. ID.; ID.; PROHIBITION; QUESTIONS OF FACT CANNOT BE DECIDED THEREIN; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— "[T]here is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts." x x x [Q]uestions of fact require evidentiary processes, the "calibration of the evidence, the credibility of the witnesses, the existence and the relevance of surrounding circumstances, and the probability of specific situations," especially "[i]f the query requires x x x the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual." Generally, these questions of fact cannot be decided by a petition for prohibition under Rule 65, because the rule applies to jurisdictional flaws brought about by lack, excess, or grave abuse of discretion.

3. ID.; ID.; *CERTIORARI*, PROHIBITION AND *MANDAMUS*; CANNOT BE AVAILED OF IF A RESORT TO AN ADMINISTRATIVE REMEDY CAN STILL BE MADE.— The failure to fulfill the requirements of Rule 65 disallows the CA from taking due course of the Petition; otherwise appeals and motions for reconsideration would be rendered meaningless, as stated time and again by this Court: "[I]f resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons." x x x Moreover, courts have accorded respect for the specialized ability of other agencies of government to deal with the issues within their respective specializations prior to any court intervention.

4. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; POWERS.— The 1987 Constitution created the constitutional commissions as independent constitutional bodies, tasked with specific roles in the system of governance that require expertise in certain fields. x x x As one of the three (3) independent constitutional commissions, COA has been empowered to define the scope of its audit and examination and to establish the techniques and methods

required therefor; and to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties. Thus, in the light of this constitutionally delegated task, the courts must exercise caution when intervening with disputes involving these independent bodies x x x.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; CAN ONLY BE AIMED AT JUDICIAL, QUASI-JUDICIAL AND MINISTERIAL FUNCTIONS.— [The issuance of LAO Order No. 2004-093] was obviously not an exercise of judicial power, which is constitutionally vested in the Supreme Court and such other courts as may be established by law. Neither was it an exercise of quasi-judicial power, as administrative agencies exercise it "to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law." x x x. Yet issuing the Order was not ministerial, because it required the exercise of discretion. Ministerial acts do not require discretion or the exercise of judgment, but only the performance of a duty pursuant to a given state of facts in the manner prescribed. The Order obviously involved discretion, in both the choice of the personnel and the powers/functions to be given them. A Rule 65 petition for prohibition can only be aimed at judicial, quasi-judicial, and ministerial functions. Since the issuance of the LAO Order assailed was not characterized by any of the three functions, x x x then it follows that the GSIS chose the wrong remedy. Moreover, "where it is the Government which is being enjoined from implementing an issuance which enjoys the presumption of validity, such discretion [to enjoin] must be exercised with utmost caution."

6. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PROPER WHEN A CLEAR LEGAL RIGHT HAS BEEN ESTABLISHED.— A preliminary injunction is proper only when the plaintiff appears to be clearly entitled to the relief sought and has substantial interest in the right sought to be defended. Factually, there must exist "a right to be protected and that the acts against which the writ is to be directed are violative of the said right." As this Court has previously ruled, "[w]hile the existence of the right need not be conclusively established,

it must be clear." Lacking a clear legal right, the provisional remedy should not have been issued, all the more because the factual support for issuing the writ had not been established. In giving injunctive relief, courts cannot reverse the burden of proof, for to do so "would assume the proposition which the petitioner is inceptively duty bound to prove." This concern is not a mere technicality, but lies at the heart of procedural law, for every case before a court of law requires a cause of action.

7. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; HAS THE POWER TO CREATE A SPECIAL AUDIT TEAM.— [T]he COA has "the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, instrumentalities, including government-owned and controlled corporations with original charter[.] x x x." The Constitution grants the COA the exclusive authority to define the scope of its audit and examination, and establish the techniques and methods therefor. Pursuant to this authority, COA Memorandum No. 2002-053 was promulgated, giving the General Counsel the authority to deputize a special audit team x x x. This Memorandum, in turn, draws its force from COA Resolution No. 2002-005 x x x. The validity of the SAT, therefore, cannot be contested on the grounds claimed by GSIS. If ever it has a cause for complaint, it should refer to the conduct of the audit, and not to the validity of the auditing body. And since the COA itself provides for the procedure to contest such audit, the Court must not interfere.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
GSIS Law Office for GSIS.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for *Certiorari* and Prohibition[1] filed on 10 November 2006, seeking to set aside two Resolutions of the Court of Appeals (CA) of CA-G.R. SP No. 90484, dated 9 August 2006[2] and 23 September 2005,[3] respectively, and to prohibit the CA from proceeding with CA-G.R. SP No. 90484.

Respondent Government Service Insurance System (GSIS) filed a Petition for Prohibition with the CA dated 18 July 2005 against petitioner Special Audit Team (SAT) of the Commission on Audit (COA) with a prayer for the issuance of a temporary restraining order (TRO), a writ of preliminary prohibitory injunction, and a writ of prohibition.[4] Subsequently, GSIS also submitted a Manifestation and Motion dated 21 July 2005 detailing the urgency of restraining the SAT.[5] The CA issued a Resolution on 22 July 2005, directing petitioner SAT to submit the latter's comment, to be treated as an answer.[6] Additionally, the CA granted the prayer of GSIS for the issuance of a TRO effective sixty (60) days from notice.

After requiring the submission of memoranda, CA issued the assailed Resolution dated 23 September 2005 in CA-G.R.

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[1] *Rollo*, pp. 23-77.

[2] *Id.* at 16-17; penned by Associate Justice Elvi John S. Asuncion, chairperson and concurred in by Associate Justices Amelita G. Tolentino and Mariflor P. Punzalan-Castillo.

[3] *Id.* at 12-14, Penned by Associate Justice Asuncion, chairperson and concurred in by Associate Justices Mariano C. del Castillo (now a member of this Court) and Mariflor P. Punzalan-Castillo.

[4] *Id.* at 184-203.

[5] *Id.* at 206-211.

[6] *Id.* at 205; CA-G.R. SP No. 90484; penned by Associate Justice Asuncion, and concurred in by Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe (now a member of this Court).

SP No. 90484, granting the prayer for the issuance of a writ of preliminary injunction upon the posting of an injunction bond.[7] The Office of the Solicitor General (OSG) filed a Motion for Reconsideration (MR) and a Comment on the petition dated 10 October 2005, after it was notified of the case, as the SAT had been represented in the interim by one of the team members instead of the OSG.[8] The MR was denied through a Resolution of the CA on 9 August 2006.[9]

The present Petition seeks to nullify both the 23 September 2005 and the 9 August 2006 CA Resolutions and to prohibit the CA from proceeding to decide the case.

ANTECEDENT FACTS

COA created the SAT under Legal and Adjudication Office (LAO) Order No. 2004-093, which was issued by COA Assistant Commissioner and General Counsel Raquel R. Ramirez-Habitan. Tasked to conduct a special audit of specific GSIS transactions, the SAT had the avowed purpose of conducting a special audit of those transactions for the years 2000 to 2004.[10] Accordingly, the SAT immediately initiated a conference with GSIS management and requested copies of pertinent auditable documents, which the latter initially agreed to furnish.[11] However, due to the objection of GSIS to the actions of SAT during the conference,[12] the request went unheeded. This prompted the latter to issue a *subpoena duces tecum*.[13]

In response to the *subpoena*, the GSIS, through its President and General Manager Winston F. Garcia, replied that while it did recognize the authority of COA to constitute a team to

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[7] *Id.* at 79-81; Resolution dated 23 September 2005.

[8] *Id.* at 276-321.

[9] *Id.* at 83-83; CA-G.R. SP No. 90484 Resolution.

[10] *Id.* at 85-86; dated 30 September 2004.

[11] *Id.* at 28.

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

[13] *Id.* at 107.

conduct a special audit, that team should not be the SAT, whose members were biased, partial, and hostile.[14] The then-COA Chairperson Guillermo N. Carague denied the request of GSIS on account of the restructuring of the commission under COA Resolution 2002-005, which formed the basis for the SAT's creation.[15] However, through a subsequent letter of Atty. Claro B. Flores and Atty. Nelo B. Gellaco, the GSIS alleged that the SAT's creation was not supported by COA Resolution 2002-005, which was without force and effect.[16]

The reasoning of both lawyers was based on the theory that the 1987 Constitution did not give COA the power to reorganize itself.[17] Allegedly, the commission only had the power to define the scope of its audit and examination, as well as to promulgate rules concerning pleading and practice.[18] Even if the COA were allowed to reorganize itself, the GSIS claimed that the *subpoena* required a case to have been brought to the commission for resolution.[19]

Thereafter, several GSIS officials sent COA Chairperson Carague a letter emphasizing that the special audit should be conducted by another team and detailing how the SAT, as then constituted, prejudged the legality of several key projects of the GSIS[20] while merely relying on hearsay and inapplicable legal standards.[21]

In its Petition, the SAT claimed that due to the continued refusal of GSIS to cooperate, the team was constrained to employ "alternative audit procedures" by gathering documents from the Office of the Auditor of GSIS, the House of Representatives,

[14] *Id.* at 87.

[15] *Id.* at 105-106.

[16] *Id.* at 90.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 90-91.

[20] *Id.* at 108-142.

[21] *Id.* at 92-96.

and others.[22] Meanwhile, some of the audit observations made by the SAT appeared in the newspaper *Manila Times*,[23] resulting in the refusal of GSIS management to attend the SAT's exit conference.[24]

COURT INTERVENTION

On 15 April 2005, GSIS filed with the COA itself a "Petition/ Request to nullify Special Audit Report dated 29 March 2005 on selected transactions of the GSIS for CY 2000 to 2004."[25] The GSIS also filed a Petition for Prohibition dated 18 July 2005[26] before the CA, whose Resolutions therein led to this present Petition.

PARTIES' CLAIMS

Petitioner SAT anchors its claims on the following grounds:

First, the grant of the preliminary injunction was in grave abuse of discretion because of procedural infirmities in the Petition.[27]

Second, the CA had no jurisdiction to rule on the validity or correctness of the findings and recommendations of the SAT because of the doctrines of primary jurisdiction and exhaustion of administrative remedies. Additionally, judicial review over the COA is vested exclusively in the Supreme Court.[28]

Third, the SAT's special audit has basis in law.[29]

Respondent GSIS, on the other hand, claims that the need for an injunction was urgent, since the SAT's supervisor had said that notices for disallowance were available at the COA's

[22] *Id.* at 31.

[23] *Id.* at 211.

[24] *Id.* at 143.

[25] *Id.* at 160-178.

[26] *Id.* at 184-203.

[27] *Id.* at 37.

[28] *Id.* at 38.

[29] *Id.*

Records Division.[30] As to the procedural and substantial aspect, GSIS claims the following:

First, the Petition for Prohibition satisfies the legal and procedural requirements.[31]

Second, the CA has the power to prohibit the conduct of special audit and the issuance of notices of disallowance.[32]

Third, the special audit does not have statutory basis.[33]

In support of the prohibitory writ, GSIS claims that it is only the regular auditor who can conduct such audits and issue disallowances; that it is only the commissioner of COA who can delegate this power; and that GSIS would suffer grave and irreparable injury, should the SAT implement the latter's report.

ISSUES

We categorize the arguments in the following manner:

1. Whether or not prohibition is the correct remedy
2. Whether or not the writ of preliminary injunction was properly issued
3. Whether or not the SAT was validly constituted

RULING

PROHIBITION IS NOT THE CORRECT REMEDY.

There is an appeal or a plain, speedy, and adequate remedy available.

A rule of thumb for every petition brought under Rule 65 is the unavailability of an appeal or any "plain, speedy, and adequate remedy."[34] *Certiorari*, prohibition, and *mandamus* are extraordinary remedies that historically require extraordinary

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[30] *Id.* at 356.

[31] *Id.* at 360.

[32] *Id.*

[33] *Id.*

[34] 1997 RULES OF COURT, Rule 65, Secs. 1, 2, & 3.

facts to be shown[35] in order to correct errors of jurisdiction.[36] The law also dictates the necessary steps before an extraordinary remedy may be issued.[37] To be sure, the availability of other remedies does not always lend itself to the impropriety of a Rule 65 petition.[38] If, for instance, the remedy is insufficient or would be proven useless,[39] then the petition will be given due course.[40]

COA itself has a mechanism for parties who are aggrieved by its actions and are seeking redress directly from the commission itself.

Section 48 of Presidential Decree No. 1445 reads:

> Appeal from decision of auditors. Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

Additionally, Rule V, Section 1 of the 1997 COA Rules provides:

> An aggrieved party may appeal from an order or decision or ruling rendered by the Auditor embodied in a report, memorandum, letter, notice of disallowances and charges, Certificate of Settlement and Balances, to the Director who has jurisdiction over the agency under audit.[41]

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[35] Separate Opinion of Justice Johnson, *Garcia v. Sweeney*, 4 Phil. 751, 754 (1904); *Ongsitco v. Court of Appeals*, 325 Phil. 1069, 1076 (1996).

[36] *Ongsitco v. Court of Appeals*, 325 Phil. 1069, 1076 (1996); *New Frontier Sugar Corp. v. RTC of Iloilo*, 542 Phil. 587, 597 (2007).

[37] *Belisle Investment & Financing Co., Inc. v. State Investment House Inc.*, 235 Phil. 633, 640 (1987).

[38] *Chua v. Court of Appeals*, 398 Phil. 17, 30-31 (2000).

[39] *Republic v. Lacap*, G.R. No. 158253, 2 March 2007, 517 SCRA 255.

[40] *People v. Lipao*, G.R. No. 154557, 13 February 2008, 545 SCRA 52.

[41] 1997 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT (1997 COA RULES).

Rule VI, Section 1, continues the linear procedure, to wit:

> The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.[42]

This discussion of the different procedures in place clearly shows that an administrative remedy was indeed available. To allow a premature invocation of Rule 65 would subvert these administrative provisions, unless they fall under the established exceptions to the general rule, some of which are as follows:

1) when the question raised is purely legal;
2) when the administrative body is in estoppel;
3) when the act complained of is patently illegal;
4) when there is urgent need for judicial intervention;
5) when the claim involved is small;
6) when irreparable damage will be suffered;
7) when there is no other plain, speedy and adequate remedy;
8) when strong public interest is involved;
9) when the subject of the controversy is private land;
10) in *quo warranto* proceedings.[43]

GSIS claims that its case falls within the exceptions, because (a) the SAT supervisor has threatened to issue notices of disallowance;[44] (b) GSIS did nothing to stop the threatened issuances or the public appearances of the SAT supervisor;[45] (c) the petition/request filed with the COA has not been acted upon as of date;[46] (d) GSIS was denied due process because

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[42] *Id.*

[43] *Philippine Health Insurance Corporation v. Chinese General Hospital,* 496 Phil. 349, 361 (2005).

[44] *Rollo,* pp. 365-366.

[45] *Id.* at 366.

[46] *Id.*

SAT had acted with partiality and bias;[47] and (e) the special audit was illegal, arbitrary, or oppressive, having been done without or in excess or in grave abuse of discretion.[48]

All of these claims are baseless. First, a threat to issue a notice of disallowance is speculative, absent actual proof. Moreover, even if the threat were real, it would not fall under any of the exceptions, because the COA rules provide an adequate remedy to dispute a notice of disallowance:

> Who May Appeal. - An aggrieved party may appeal from an order or decision or ruling rendered by the Auditor embodied in a report, memorandum, letter, **notice of disallowances** and charges, Certificate of Settlement and Balances, to the Director who has jurisdiction over the agency under audit.factual issues that require some form of proof in order that they may be considered. (Emphasis supplied)[49]

Second, GSIS also mentions the fact that the COA has not acted on the former's petition/request both in the original Petition before the CA[50] and the pleadings before this Court.[51] This inaction is, of course, explainable by the fact that the CA issued a TRO and a writ of preliminary injunction. Moreover, the cited two (2) month delay is not so unreasonable as to require the trampling of procedural rules.

Third, the claim that there was a denial of due process runs counter to the claim that there is a pending petition/request before the COA. The fact that the petition/request was not denied or delayed for reasons within the control of the COA contradicts any claim that there was a due process violation involved.

Fourth, allegations of partiality and bias are questions of fact already before the COA. As the Court has clarified, "[t]here

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[47] *Id.*

[48] *Id.* at 366-367.

[49] 1997 COA RULES, Rule V, Sec. 1.

[50] *Rollo,* pp. 185 & 190.

[51] *Id.* at 355.

is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts."[52]

> A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[53]

True enough, questions of fact require evidentiary processes, the "calibration of the evidence, the credibility of the witnesses, the existence and the relevance of surrounding circumstances, and the probability of specific situations,"[54] especially "[i]f the query requires x x x the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual."[55] Generally, these questions of fact cannot be decided by a petition for prohibition under Rule 65,[56] because the rule applies to jurisdictional flaws brought about by lack, excess, or grave abuse of discretion.[57]

The Petition before the CA did not present anything to show that the remedies available to the GSIS were insufficient. If the Petition itself admitted to the existence of other remedies,[58] then the burden of proving that there was an exception was on

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[52] *Vigilar v. Aquino,* G.R. No. 180388, 18 January 2011, 639 SCRA 772, 778; *Development Bank of the Philippines v. Go,* G.R. No. 168779, 14 September 2007, 533 SCRA 460, 468.

[53] *Mendoza v. People,* 500 Phil. 550, 558 (2005).

[54] *Cabaron v. People,* G.R. No. 156981, 5 October 2009, 603 SCRA 1, 7.

[55] *Id.*

[56] *Padua v. Ranada,* 439 Phil. 538, 552 (2002); *National Power Corporation v. Province of Quezon and Municipality of Pagbilao,* G.R. No. 171586, 25 January 2010, 611 SCRA 71; *Olivares v. Marquez,* 482 Phil. 183, 192 (2004).

[57] 1997 RULES OF COURT, Rule 65, Sec. 1.

[58] *Rollo,* p. 185.

the party seeking that exception; in the absence of proof the Petition must be denied.[59] This burden of proof is "the duty of a party to present such amount of evidence on the facts in issue as the law deems necessary for the establishment of his claim."[60]

The failure to fulfill the requirements of Rule 65 disallows the CA from taking due course of the Petition;[61] otherwise appeals and motions for reconsideration would be rendered meaningless,[62] as stated time and again by this Court:

> [I]f resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.[63] x x x.

Moreover, courts have accorded respect for the specialized ability of other agencies of government to deal with the issues

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[59] *Teotico v. Agda*, 274 Phil. 960, 979-981 (1991).

[60] *Destreza v. Riñoza-Plazo*, G.R. No. 176863, 30 October 2009, 604 SCRA 775, 785; *New Sun Valley Homeowner's Association, Inc. v. Sangguniang Barangay*, G.R. No. 156686, 27 July 2011, 654 SCRA 438; *Santos v. National Statistics Office*, G.R. No. 171129, 6 April 2011, 647 SCRA 345.

[61] *William Golangco Construction Corporation v. Ray Burton Development Corporation*, G.R. No. 163582, 9 August 2010, 627 SCRA 74, 82-83.

[62] *Dimarucot v. People*, G.R. No. 183975, 20 September 2010, 630 SCRA 659, 668-669; *Domdom v. Third and Fifth Divisions of Sandiganbayan*, G.R. Nos. 182382-83, 24 February 2010, 613 SCRA 528.

[63] *Ongsuco v. Malones*, G.R. No. 182065, 27 October 2009, 604 SCRA 499, 511-512.

within their respective specializations prior to any court intervention.[64] The Court has reasoned thus:

> We have consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[65]

The 1987 Constitution created the constitutional commissions as independent constitutional bodies, tasked with specific roles in the system of governance that require expertise in certain fields.[66] For COA, this role involves

> [T]he power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, instrumentalities, including government-owned and controlled corporations with original charter[.] x x x.[67]

As one of the three (3) independent constitutional commissions, COA has been empowered to define the scope of its audit and examination and to establish the techniques and methods required therefor; and to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties.[68]

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[64] *Fua, Jr. v. Commission on Audit*, G.R. No. 175803, 4 December 2009, 607 SCRA 347.

[65] *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties and Holdings, Inc.*, G.R. No. 175039, 18 April 2012, 670 SCRA 83, 89.

[66] 1987 CONSTITUTION, Art. IX.

[67] *Id.* at Sec. 2(1).

[68] *National Irrigation Administration v. Enciso,* 523 Phil. 237, 242 (2006).

Thus, in the light of this constitutionally delegated task, the courts must exercise caution when intervening with disputes involving these independent bodies, for

> The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.[69]

COA was not exercising judicial, quasi-judicial, or ministerial functions when it issued LAO Order No. 2004-093.

LAO Order No. 2004-093 reads as follows:

> **SUBJECT:** ***SPECIAL AUDIT/INVESTIGATION ON SELECTED TRANSACTION OF THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) FROM CY 2000 TO 2004.***
>
> Pursuant to COA Memorandum No. 2002-053 dated August 26, 2002, a team is hereby constituted composed of the following personnel, namely:
>
> xxx xxx xxx
>
> who shall conduct a special audit on selected transactions for the period 2000-2004 with particular attention on the creation of subsidiaries such as GSIS Properties, Inc., missing paintings, cash advances and allowances/benefits of the Officers and Members of the Board of Trustees of the GSIS within a period of ten (10) working days and shall submit the appropriate report thereon within five (5) days after completion of the audit to the Director, Legal and Adjudication Office – Office of Legal Affairs who shall supervise the proper implementation of this order.
>
> Travel and other incidental expenses that may be incurred with this assignment shall be charged against the appropriate funds of this Commission and the Team Leaders are hereby authorized to draw

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[69] *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties and Holdings, Inc.*, *supra* note 65, at 90.

a cash advance of ₱1,900 to defray out of pocket expenses subject to the usual accounting and auditing rules and regulations.

By virtue of Section 40 of Presidential Decree No. 1445 in relation to Item III.A.6 of COA Memorandum 2002-053, the team shall have the authority to administer oaths, take testimony, summon witnesses and compel the production of documents by compulsory processes in all matters relevant to this audit/investigation. x x x.[70]

This was obviously not an exercise of judicial power, which is constitutionally vested in the Supreme Court and such other courts as may be established by law.[71] Neither was it an exercise of quasi-judicial power, as administrative agencies exercise it "to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."[72] The Court has made this point clear:

In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[73]

Yet issuing the Order was not ministerial, because it required the exercise of discretion. Ministerial acts do not require discretion or the exercise of judgment, but only the performance of a duty pursuant to a given state of facts in the manner prescribed.[74] The Order obviously involved discretion, in both the choice of the personnel and the powers/functions to be given them.

A Rule 65 petition for prohibition can only be aimed at judicial, quasi-judicial, and ministerial functions.[75] Since the issuance

[70] *Rollo*, pp. 85-86.

[71] 1987 CONSTITUTION, Art. VIII, Sec. 1.

[72] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003).

[73] *Id.* at 156-157.

[74] *Espiridion v. Court of Appeals*, G.R. No. 146933, 8 June 2006, 490 SCRA 273, 277.

[75] 1997 RULES OF COURT, Rule 65, Sec. 2.

of the LAO Order assailed was not characterized by any of the three functions, as shown *supra*, then it follows that the GSIS chose the wrong remedy. Moreover, "where it is the Government which is being enjoined from implementing an issuance which enjoys the presumption of validity, such discretion [to enjoin] must be exercised with utmost caution."[76]

THE WRIT SHOULD NOT HAVE BEEN ISSUED.

Writs of injunction do not perfunctorily issue from the courts.

For the issuance of a writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage. **In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.** In this case, respondents failed to show that they have a right to be protected and that the acts against which the writ is to be directed are violative of the said right. (Emphasis supplied)[77]

The CA Resolution stated the following as its reason for issuing the writ of preliminary injunction:

It should be noted that the instant petition precisely questions the creation of the respondent SAT, and consequently, the validity of its actions. In order to completely review and adjudicate the matters raised herein, the issuance of a preliminary injunction is warranted in the meantime in order to preserve the status quo and to avoid grave and irreparable injury should the recommendations in the AOM and special audit report regarding the notices of disallowance of certain GSIS transactions be enforced. Furthermore, such recourse is necessary in order not to render moot any pronouncement that this Court may render in this petition.[78]

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[76] *Ermita v. Aldecoa-Delorino*, G.R. No. 177130, 7 June 2011, 651 SCRA 128, 136-140.

[77] *Equitable PCI Bank, Inc. v. Fernandez*, G.R. No. 163117, 18 December 2009, 608 SCRA 433, 440.

[78] *Rollo*, p. 81.

From its ruling, it is clear that the CA erred in granting a TRO and writ of preliminary injunction. A preliminary injunction is proper only when the plaintiff appears to be clearly entitled to the relief sought and has substantial interest in the right sought to be defended.[79] Factually, there must exist "a right to be protected and that the acts against which the writ is to be directed are violative of the said right."[80] As this Court has previously ruled, "[w]hile the existence of the right need not be conclusively established, it must be clear."[81]

Lacking a clear legal right,[82] the provisional remedy should not have been issued, all the more because the factual support for issuing the writ had not been established. In giving injunctive relief, courts cannot reverse the burden of proof, for to do so "would assume the proposition which the petitioner is inceptively duty bound to prove."[83] This concern is not a mere technicality, but lies at the heart of procedural law, for every case before a court of law requires a cause of action.[84]

Moreover, there was no urgency in the request of the GSIS for injunctive relief, because no notice of disallowance had been issued. The CA held that since there was a question on the validity of the SAT and a corresponding threat of a notice of disallowance, then the status quo must be preserved.[85] Its criteria falls short of the "clear legal right" standard. Even if there was a notice of disallowance,, the COA's rules for contesting the issuance would have been the proper remedy; otherwise,

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[79] *Power Sites and Signs, Inc. v. United Neon*, G.R. No. 163406, 24 November 2009, 605 SCRA 196, 208.

[80] *National Power Corporation v. Hon. Vera*, 252 Phil. 747, 752 (1989).

[81] *Power Sites and Signs, Inc. v. United Neon, supra* note 79.

[82] See *Fua, Jr. v. Commission on Audit, supra* note 64; *Rosario v. Court of Appeals*, G.R. No. 89554, 10 July 1992, 211 SCRA 384, 387.

[83] *Government Service Insurance System v. Hon. Florendo*, 258 Phil. 694, 705 (1989).

[84] *Republic vs. Hon. De Los Angeles*, 148-B Phil. 902, 921 (1971).

[85] *Rollo*, pp. 79-81, 83-84.

any administrative dispute settlement procedure would be rendered useless by the simple filing of an injunctive suit in court.

THE SAT WAS VALIDLY CONSTITUTED.

We come now to the crux of the dispute: the validity of the creation of the SAT. Much as the procedural discussion already leads this Court to a conclusion, in the interest of justice and in consideration of the manifest desire of both parties to have the matter dealt with in this forum, it shall rule on the validity of the SAT, notwithstanding the procedural infirmities of the original Petition in the CA. This power is vested in this Court when so required by the exigencies of the case.[86] The exercise of this power is especially important in this case, because the justification of GSIS for directly seeking court intervention is based on the alleged invalidity of the SAT's creation. Considering that court intervention must be put to an end, and that the question has its roots in the powers of a constitutional commission, we rule on the merits of the case.

As previously discussed, the COA has "the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, instrumentalities, including government-owned and controlled corporations with original charter[.] x x x."[87] The Constitution further provides as follows:

> The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.[88]

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[86] *Dela Llana v. The Chairperson, Commission on Audit*, G. R. No. 180989, 7 February 2012, 665 SCRA 176.

[87] 1987 CONSTITUTION, at Art. IX, Sec. 2(1).

[88] 1987 CONSTITUTION, at Art. IX-D, Sec. 2(2).

The Constitution grants the COA the exclusive authority to define the scope of its audit and examination, and establish the techniques and methods therefor. Pursuant to this authority, COA Memorandum No. 2002-053 was promulgated, giving the General Counsel the authority to deputize a special audit team, *viz:*

> In case the Director, Legal and Adjudication Office for the sector in the Central Office finds that the transaction/event is a proper subject of special or fraud audit, he shall recommend the creation of a special audit team for approval of the General Counsel who shall sign the office order for the purpose. This memorandum shall constitute authority for the General Counsel to deputize the team pursuant to the provisions of Section 40 of P.D. 1445.[89]

This Memorandum, in turn, draws its force from COA Resolution No. 2002-005,[90] the preamble of which states:

> WHEREAS, the Constitution (Article IX, D (2)) invests the Commission on Audit with the exclusive authority to define the scope of its audit and examination as well as establish the techniques and methods required therefor;
>
> WHEREAS, inherent in this authority is the prerogative of COA to organize its manpower in such a manner that would be appropriate to cope with its defined scope of audit as well as the methods and techniques it prescribes or adopts;
>
> WHEREAS, since such scope of audit, methods and techniques vary from time to time as the exigencies of the situation may demand, COA is impelled to continually restructure its organization to keep abreast of the necessary changes;
>
> WHEREAS, invoking the independence and fiscal autonomy which the Constitution guarantees, COA has in the past successfully effected various changes in its organizational structure within the limits of its appropriations; x x x.

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[89] COA Memorandum No. 2002-053, Guidelines on the Delineation of the Auditing and Adjudication Functions, 26 August 2002, III (A) Sec. 6.

[90] COA Resolution No. 2002-005, COA Organizational Restructuring, 17 May 2002, Preamble.

The validity of the SAT, therefore, cannot be contested on the grounds claimed by GSIS. If ever it has a cause for complaint, it should refer to the conduct of the audit, and not to the validity of the auditing body. And since the COA itself provides for the procedure to contest such audit, the Court must not interfere. Simplifying it once and for all,

> The increasing pattern of law and legal development has been to entrust "special cases" to "special bodies" rather than the courts. As we have also held, the shift of emphasis is attributed to the need to slacken the encumbered dockets of the judiciary and so also, **to leave "special cases" to specialists and persons trained therefor**. (Emphasis supplied)[91]

CONCLUSION

Once again, the Court must remind the parties to judicial disputes to adhere to the standards for litigation as set by procedural rules. These rules exist primarily for the benefit of litigants, in order to afford them both speedy and appropriate relief from a body duly authorized by law to dispense the remedy. If a litigant prematurely invokes the jurisdiction of a court, then the potential result might be a deafening silence. Although we recognize that justice delayed is justice denied,[92] we must also bear in mind that justice in haste is justice defiled.

WHEREFORE, the Petition for *Certiorari* and Prohibition is **GRANTED**, the Resolutions dated 9 August 2006 and 23 September 2005 in CA-G.R. SP No. 90484 are hereby **ANNULLED** and **SET ASIDE**. The CA is directed to dismiss the Petition in CA–G.R. SP No. 90484.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Leonen, JJ.,* concur.

Del Castillo and *Perlas-Bernabe, JJ.,* no part.

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[91] *Qualitrans Limousine Service, Inc. v. Royal Class Limousine Service,* 259 Phil. 175, 189 (1989).

[92] *Atty. Sanchez v. Judge Vestil,* 358 Phil. 477, 481 (1998).

EN BANC

[G.R. No. 175368. April 11, 2013]

LEAGUE OF PROVINCES OF THE PHILIPPINES, *petitioner, vs.* **DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES and HON. ANGELO T. REYES, in his capacity as Secretary of DENR,** *respondents.*

SYLLABUS

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; NATURAL RESOURCES; THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES IS IN CHARGE WITH THE STATE'S CONSTITUTIONAL MANDATE TO CONTROL AND SUPERVISE THE EXPLORATION, DEVELOPMENT, UTILIZATION AND CONSERVATION THEREOF.— Paragraph 1 of Section 2, Article XII (National Economy and Patrimony) of the Constitution provides that "[t]he exploration, development and utilization of natural resources shall be under the full control and supervision of the State." Moreover, paragraph 3 of Section 2, Article XII of the Constitution provides that "[t]he **Congress** may, by law, allow small-scale utilization of natural resources by Filipino citizens x x x." Pursuant to Section 2, Article XII of the Constitution, R.A. No. 7076 or the *People's Small-Scale Mining Act of 1991*, was enacted, establishing under Section 4 thereof a People's Small-Scale Mining Program to be implemented by the DENR Secretary in coordination with other concerned government agencies. The *People's Small-Scale Mining Act of 1991* defines "small-scale mining" as "refer[ring] to mining activities, which rely heavily on manual labor using simple implement and methods and do not use explosives or heavy mining equipment." It should be pointed out that the Administrative Code of 1987 provides that the DENR is, subject to law and higher authority, in charge of carrying out the State's constitutional mandate, under Section 2, Article XII of the Constitution, to control and supervise the exploration, development, utilization and conservation of the country's natural resources. Hence, the enforcement of small-scale mining

law in the provinces is made subject to the supervision, control and review of the DENR under the Local Government Code of 1991, while the People's Small-Scale Mining Act of 1991 provides that the People's Small-Scale Mining Program is to be implemented by the DENR Secretary in coordination with other concerned local government agencies.

2. ID.; LOCAL GOVERNMENT; LOCAL AUTONOMY; REFERS TO THE ADMINISTRATIVE AUTONOMY OF LOCAL GOVERNMENT UNITS.— Section 4, Article X (Local Government) of the Constitution states that "[t]he President of the Philippines shall exercise general supervision over local governments," and Section 25 of the Local Government Code reiterates the same. General supervision by the President means no more than seeing to it that laws are faithfully executed or that subordinate officers act within the law. The Court has clarified that the constitutional guarantee of local autonomy in the Constitution [Art. X, Sec. 2] refers to the *administrative* autonomy of local government units or, cast in more technical language, the decentralization of government authority. It does not make local governments sovereign within the State. Administrative autonomy may involve devolution of powers, but subject to limitations like following national policies or standards, and those provided by the Local Government Code, as the structuring of local governments and the allocation of powers, responsibilities, and resources among the different local government units and local officials have been placed by the Constitution in the hands of Congress under Section 3, Article X of the Constitution.

3. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; BASIC SERVICES AND FACILITIES FOR A PROVINCE; THE ENFORCEMENT OF THE SMALL-SCALE MINING LAW IN THE PROVINCE IS SUBJECT TO THE SUPERVISION, CONTROL AND REVIEW OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.— [T]he Local Government Code did not fully devolve the enforcement of the small-scale mining law to the provincial government, as its enforcement is subject to the supervision, control and review of the DENR, which is in charge, subject to law and higher authority, of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization of the country's natural resources.

4. ID.; STATUTES; REPUBLIC ACT NO. 7076 (THE PEOPLE'S SMALL-SCALE MINING ACT OF 1991); GRANTS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SECRETARY QUASI-JUDICIAL FUNCTIONS TO THE EXTENT NECESSARY IN SETTLING DISPUTES OVER CONFLICTING CLAIMS; CASE AT BAR.— [T]he decision of the DENR Secretary, declaring that the Application for Exploration Permit of AMTC was valid and may be given due course, and canceling the Small-Scale Mining Permits issued by the Provincial Governor, emanated from the power of review granted to the DENR Secretary under R.A. No. 7076 and its Implementing Rules and Regulations. The DENR Secretary's power to review and, therefore, decide, in this case, the issue on the validity of the issuance of the Small-Scale Mining Permits by the Provincial Governor as recommended by the PMRB, is a quasi-judicial function, which involves the determination of what the law is, and what the legal rights of the contending parties are, with respect to the matter in controversy and, on the basis thereof and the facts obtaining, the adjudication of their respective rights. The DENR Secretary exercises quasi-judicial function under R.A. No. 7076 and its Implementing Rules and Regulations to the extent necessary in settling disputes, conflicts or litigations over conflicting claims. This quasi-judicial function of the DENR Secretary can neither be equated with "substitution of judgment" of the Provincial Governor in issuing Small-Scale Mining Permits nor "control" over the said act of the Provincial Governor as it is a determination of the rights of AMTC over conflicting claims based on the law.

5. ID.; ID.; HAVE IN THEIR FAVOR THE PRESUMPTION OF CONSTITUTIONALITY.— In determining whether Section 17 (b)(3)(iii) of the Local Government Code of 1991 and Section 24 of R.A. No. 7076 are unconstitutional, the Court has been guided by ***Beltran v. The Secretary of Health***, which held: "The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. Every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt. Those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis therefor. Otherwise, the petition must fail." In this case, the Court finds that the grounds raised

by petitioner to challenge the constitutionality of Section 17 (b)(3)(iii) of the Local Government Code of 1991 and Section 24 of R.A. No. 7076 failed to overcome the constitutionality of the said provisions of law.

SERENO, *C.J., concurring opinion:*

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LEGAL STANDING; PUBLIC ACTION; DEFINED; INJURY IN FACT AND INJURY IN LAW, DISTINGUISHED. — A public action is a suit brought to vindicate a right belonging to the public *qua* public. Based on present jurisprudence, except in cases involving issues of trancendental importance, it can only be brought by the proper representative of the public – one who has standing. Generally, the one who has standing is the one who suffered or immediately stands to suffer actual injury or injury in fact. Injury in fact means damage that is distinct from those suffered by the public. This is different from legal injury or injury in law, which results from a violation of a right belonging to a person.

2. ID.; ID.; ID.; ID.; CITIZEN'S SUIT; PRESUPPOSES THAT THERE IS NO ONE WHO SUFFERED INJURY IN FACT. — The divergent position appears to confuse the general requirement for standing with standing in citizen's suits. The latter normally presupposes that there is no one who suffered injury in fact. Therefore, any citizen is allowed to bring the suit to vindicate the public's right.

3. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; CLASS SUITS; COMMON OR GENERAL INTEREST IS A REQUIREMENT THEREIN BUT NOT IN PUBLIC ACTIONS.— [T]he divergent position appears to confuse public actions with class suits (a specie of private action) when it stated that "[p]rovinces do not have a common or general interest on matters related to mining that the League of Provinces can represent." Under Section 12 of Rule 3 of the Rules of Court, "common or general interest" is a requirement in class suits. It is not a requirement for standing in public actions.

4. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LEGAL STANDING; ORGANIZATIONAL OR ASSOCIATIONAL STANDING; DOES NOT REQUIRE AN ASSOCIATION TO SUFFER INJURY IN FACT. — [T]he divergent position also appears to confuse the general requirement for standing and standing in citizen's suits, with organizational or associational standing. The latter does not require an association to suffer injury in fact. The question is whether such organization can bring a suit on behalf of its members who have suffered the injury in fact. In short, can the representatives of the public be themselves represented in a suit. In this jurisdiction, we have acknowledged the standing of associations to sue on bahalf of their members. x x x Thus, based on jurisprudence, the League has legal standing to question the constitutionality of the subject laws, not only in behalf of the province of Bulacan, but also its other members.

5. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LEAGUE OF PROVINCES; VESTED WITH STATUTORY STANDING.— [T]he League is also vested with statutory standing. The League of Provinces' primary purpose is clear from the provisions of the Local Government Code, *viz*: "Sec. 502. *Purpose of Organization*. – There shall be an organization of all provinces to be known as the League of Provinces for **the primary purpose of ventillating, articulating and crystallizing issues affecting provincial and metropolitan political subdivision government administration, and securing, through proper and legal means, solution thereto."** x x x This purpose is further amplified by the grant to it of certain powers, functions and duties, which are, *viz*: x x x. "**(c) Adopt measures for the promotion of the welfare of all [rovinces and its officials and employees:x x x (g) Serve as a forum for crystallizing and expressing ideas, seeking the necessary assistance of the national government and providing the private sector avenues for cooperation in the promotion of the welfare of the provinces;** and **(h) Exercise such other powers and perform such other duties and functions as the league may prescribe for the welfare of the provinces and metroplitan political subdivisions."** In *League of Cities of the Philippines v. COMELEC*, this Court upheld the League of Cities' standing of the basis of Section 499 of the Local Government Code which tasks it with the "primary purpose of ventilating, articulating and crystallizing

issues affecting city government administration and securing, through proper and legal means, solutions thereto."

6. ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LEGAL STANDING; INSTANCES OF STATUTORY STANDING.— Other instances os statutory standing can be found in: (1) the Constitution, which allows any citizen to challenge "the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof; " (2) the Administrative Code wherein "[a]ny party aggrieved or adversely affected by an agency decision may seek judicial review;" (3) the Civil Code which provides that "[i]f a civil action is brought by reason of the maintenance of a public nuisance, such action shall be commenced by the city or municipal mayor," and (4) the Rules of Procedure in Environmental Cases by which "[a]ny Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws."

LEONEN, *J., concurring opinion:*

1. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 7492 (MINING ACT); QUARRY PERMITS; WHEN ISSUED.— Quarry permits x x x may only be issued "on privately-owned lands and/or public lands for building and construction materials such as marble, basalt, andesite, conglomerate, tuff, adobe, granite, gabbro, serpentine, inset filling materials, clay for ceramic tiles and building bricks, pumice, perlite and other similar materials..." It may not be issued on "...resources that contain metals or metallic constituents and/or other valuable materials in economic quantities." Not only do iron ores fall outside the classification of any of the enumerated materials in Section 43 of the Mining Act, but iron is also a metal. It may not be classified as a quarry resource, hence, the provincial governor had no authority to issue the quarry permits in the first place.

2. ID.; ID.; REPUBLIC ACT NO. 7076 (SMALL-SCALE MINING ACT); SMALL-SCALE MINING PERMITS; SHOULD COVER AREAS DECLARED AND SET ASIDE AS SMALL-SCALE MINING AREAS.— [T]he issuance of the small-scale mining

permit was still beyond the authority of the provincial governor. Small-scale mining areas must first be declared and set aside as such before they can be made subject of small-scale mining rights. The applications for small-scale mining permit, in this case, involved covered areas, which were never declared as people's small-scale mining areas. This is enough reason to deny an application for small-scale mining permit. Permits issued in disregard of this fact are void for having been issued beyond the authority of the issuing officer.

3. ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; *LOCUS STANDI*; DEFINED.— *Locus standi* is defined as "a right of appearance in a court of justice on a given question." The fundamental question 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."

4. ID.; ID.; ID.; ID.; CITIZENS' SUIT; REQUISITES.— In case of a citizens' suit, the "interest of the person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law is invalid, but also that he has 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." In the case of *Telecommunications and Broadcast Attorneys of the Philippines, Inc. and GMA Network, Inc. v. COMELEC,* we said that a citizen who raises a constitutional question may only do so if s/he could show: (1) that s/he had personally suffered some **actual or threatened injury**; (2) that the actual or threatened injury was a result of an allegedly illegal conduct of the government; (3) that the injury is traceable to the challenged action; and (4) that the injury is likely to be redressed by a favorable action.

5. ID.; ID.; ID.; ID.; THE LEAGUE OF PROVINCES HAS NO STANDING TO RAISE THE CONSTITUTIONAL ISSUE IN CASE AT BAR.— The Petitioner League of Provinces' status as an organization of all provinces duty-bound to promote local autonomy and adopt measures for the promotion of the welfare of provinces does not clothe it with standing to question the constitutionality of the Section 17(b)(iii) of the Local Government Code and Section 24 of Rep. Act No. 7076 or the Small-Scale

Mining Act. As an organization that represents all provinces, it did not suffer an actual injury or an injury in fact, resulting from the implementation of the subject provisions. It cannot be said either that the provinces that Petitioner represents suffered the same injury when the Central Office nullified the permits issued by the Governor of Bulacan. Provinces do not have a common or general interest on matters related to mining that the League of Provinces can represent. Each province has a particular interest to protect and claims to pursue that are separate and distinct from the others. Therefore, each is unique as to its reasons for raising issues to the Court. The League of Provinces cannot represent all provinces on mining-related issues. The perceived wrong suffered by the Province of Bulacan when the Central Office allegedly exercised control does not necessarily constitute a wrong suffered by the other provinces.

6. ID.; LOCAL GOVERNMENT; LOCAL GOVERNANCE; TYPES.— [T]he Constitution provides for two types of local governance other than the national government: 1) The territorial and political subdivisions composed of provinces, cities, municipalities and *barangays*; and 2) autonomous regions. The division of Article X of the Constitution distinguishes between their creation and relationship with the national government. The creation of autonomous regions takes into consideration the "historical and cultural heritage, economic and social structures, and other relevant characteristics" which its constituent geographical areas share in common. These factors are not considered in the creation of territorial and political subdivisions.

7. ID.; ID.; ID.; AUTONOMOUS REGIONS; CREATED BY AN ACT OF CONGRESS AND A REQUISITE PLEBISCITE.— Autonomous regions are not only created by an act of the Congress. The Constitution also provides for a plebiscite requirement before the organic act that creates an autonomous region becomes effective. This constitutes the creation of autonomous regions a direct act of the people. It means that the basic structure of an autonomous region, consisting of the executive department and legislative assembly, its special courts, and the provisions on its powers may not be easily amended or superseded by a simple act of the Congress. Moreover, autonomous regions have powers, *e.g.* over their administrative organization, sources of revenues, ancestral domain, natural

resources, personal, family and property relations, regional planning development, economic, social and tourism development, educational policies, cultural heritage and other matters.

8. ID.; ID.; TERRITORIAL AND POLITICAL SUBDIVISIONS; THE CREATION THEREOF IS SUBJECT TO THE LOCAL GOVERNMENT CODE ENACTED BY CONGRESS WITHOUT A PLEBISCITE REQUIREMENT.— [T]he creation of territorial and political subdivisions is subject to the Local Government Code enacted by the Congress without a plebiscite requirement. While this does not disallow the inclusion of provisions requiring plebiscites in the creation of provinces, cities, and municipalities, the Local Government Code may be amended or superseded by another legislative act that removes such requirement. Their government structure, powers, and responsibilities, therefore, are always subject to amendment by legislative acts.

9. ID.; ID.; LOCAL AUTONOMY; ADMINISTRATIVE AUTONOMY; GRANTED TO TERRITORIAL AND POLITICAL SUBDIVISIONS.— I agree that autonomy, as phrased in Section 2 of Article X of the Constitution, which pertains to provinces, cities, municipalities and *barangays*, refers only to administrative autonomy. In granting autonomy, the national government does not totally relinquish its powers. The grant of autonomy does not make territorial and political subdivisions sovereign within the state or an "imperium in imperio". The aggrupation of local government units and the creation of regional development councils in Sections 13 and 14 of Article X of the Constitution do not contemplate grant of discretion to create larger units with a recognized distinct political power that is parallel to the state. It merely facilitates coordination and exchange among them, still, for the purpose of administration. Territorial and political subdivisions are only allowed to take care of their local affairs so that governance will be more responsive and effective to their unique needs. The Congress still retains control over the extent of powers or autonomy granted to them. Therefore, when the national government invalidates an act of a territorial or political subdivision in the exercise of a power that is constitutionally and statutorily lodged to it, the territorial or political subdivision cannot complain that its autonomy is being violated. This is especially so when the extent of its autonomy

under the Constitution or law does not include power or control over the matter, to the exclusion of the national government.

10. ID.; ID.; LOCAL GOVERNANCE; AUTONOMOUS REGIONS; GRANTED MORE POWERS AND LESS INTERVENTION FROM THE NATIONAL GOVERNMENT THAN TERRITORIAL AND POLITICAL SUBDIVISIONS.— Autonomous regions are granted more powers and less intervention from the national government than territorial and political subdivisions. They are, thus, in a more asymmetrical relationship with the national government as compared to other local governments or any regional formation. The Constitution grants them legislative powers over some matters, *e.g.* natural resources, personal, family and property relations, economic and tourism development, educational policies, that are usually under the control of the national government. However, they are still subject to the supervision of the President. Their establishment is still subject to the framework of the Constitution, particularly, Sections 15 to 21 of Article X, national sovereignty and territorial integrity of the Republic of the Philippines.

APPEARANCES OF COUNSEL

Vincent Pepito F. Yambao, Jr. and *Jomar M. Olegario* for petitioner.

The Solicitor General for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari*, prohibition and *mandamus*,[1] praying that this Court order the following: (1) declare as unconstitutional Section 17(b)(3)(iii) of Republic Act (R.A.) No. 7160, otherwise known as *The Local Government Code of 1991* and Section 24 of Republic Act (R.A.) No. 7076, otherwise known as the *People's Small-Scale Mining Act of 1991*; (2) prohibit and bar respondents from exercising control

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

over provinces; and (3) declare as illegal the respondent Secretary of the Department of Energy and Natural Resources' (DENR) nullification, voiding and cancellation of the Small-Scale Mining permits issued by the Provincial Governor of Bulacan.

The facts are as follows:

On March 28, 1996, Golden Falcon Mineral Exploration Corporation (Golden Falcon) filed with the DENR Mines and Geosciences Bureau Regional Office No. III (MGB R-III) an Application for Financial and Technical Assistance Agreement (FTAA) covering an area of 61,136 hectares situated in the Municipalities of San Miguel, San Ildefonso, Norzagaray and San Jose del Monte, Bulacan.[2]

On April 29, 1998, the MGB R-III issued an Order denying Golden Falcon's Application for Financial and Technical Assistance Agreement for failure to secure area clearances from the Forest Management Sector and Lands Management Sector of the DENR Regional Office No. III.[3]

On November 11, 1998, Golden Falcon filed an appeal with the DENR Mines and Geosciences Bureau Central Office (MGB-Central Office), and sought reconsideration of the Order dated April 29, 1998.[4]

On February 10, 2004, while Golden Falcon's appeal was pending, Eduardo D. Mercado, Benedicto S. Cruz, Gerardo R. Cruz and Liberato Sembrano filed with the Provincial Environment and Natural Resources Office (PENRO) of Bulacan their respective Applications for Quarry Permit (AQP), which covered the same area subject of Golden Falcon's Application for Financial and Technical Assistance Agreement.[5]

On July 16, 2004, the MGB-Central Office issued an Order denying Golden Falcon's appeal and affirming the MGB R-III's Order dated April 29, 1998.

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[2] DENR Decision, *rollo*, pp. 53,54.

[3] *Rollo*, p. 54.

[4] *Id.*

[5] *Id.*

On September 13, 2004, Atlantic Mines and Trading Corporation (AMTC) filed with the PENRO of Bulacan an Application for Exploration Permit (AEP) covering 5,281 hectares of the area covered by Golden Falcon's Application for Financial and Technical Assistance Agreement.[6]

On October 19, 2004, DENR-MGB Director Horacio C. Ramos, in response to MGB R-III Director Arnulfo V. Cabantog's memorandum query dated September 8, 2004, categorically stated that the MGB-Central Office's Order dated July 16, 2004 became final on August 11, 2004, fifteen (15) days after Golden Falcon received the said Order, per the Certification dated October 8, 2004 issued by the Postmaster II of the Philippine Postal Corporation of Cainta, Rizal.[7]

Through letters dated May 5 and May 10, 2005, AMTC notified the PENRO of Bulacan and the MGB R-III Director, respectively, that the subject Applications for Quarry Permit fell within its (AMTC's) existing valid and prior Application for Exploration Permit, and the the former area of Golden Falcon was open to mining location only on August 11, 2004 per the Memorandum dated October 19, 2004 of the MGB Director, Central Office.[8]

On June 24, 2005, Ricardo Medina, Jr., PENRO of Bulacan, indorsed AMTC's letter to the Provincial Legal Officer, Atty. Eugenio F. Resurreccion, for his legal opinion on which date of denial of Golden Falcon's application/appeal – April 29, 1998 or July 16, 2004 is to be considered in the deliberation of the Provincial Mining Regulatory Board (PMRB) for the purpose of determining when the land subject of the Applications for Quarry Permit could be considered open for application.

On June 28, 2005, Provincial Legal Officer Eugenio Resurreccion issued a legal opinion stating that the Order dated July 16, 2004 of the MGB-Central Office was a mere reaffirmation of the Order dated April 29, 1998 of the MGB

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[6] *Id.*

[7] *Id.* at 55.

[8] *Id.*

R-III; hence, the Order dated April 29, 1998 should be the reckoning period of the denial of the application of Golden Falcon.

On July 22, 2005, AMTC filed with the PMRB of Bulacan a formal protest against the aforesaid Applications for Quarry Permit on the ground that the subject area was already covered by its Application for Exploration Permit.[9]

On August 8, 2005, MGB R-III Director Cabantog, who was the concurrent Chairman of the PMRB, endorsed to the Provincial Governor of Bulacan, Governor Josefina M. dela Cruz, the aforesaid Applications for Quarry Permit that had apparently been converted to Applications for Small-Scale Mining Permit of Eduardo D. Mercado, Benedicto S. Cruz, Gerardo R. Cruz and Lucila S. Valdez (formerly Liberato Sembrano).[10]

On August 9, 2005, the PENRO of Bulacan issued four memoranda recommending to Governor Dela Cruz the approval of the aforesaid Applications for Small-Scale Mining Permit.[11]

On August 10, 2005, Governor Dela Cruz issued the corresponding Small-Scale Mining Permits in favor of Eduardo D. Mercado, Benedicto S. Cruz, Gerardo R. Cruz and Lucila S. Valdez.[12]

Subsequently, AMTC appealed to respondent DENR Secretary the grant of the aforesaid Small-Scale Mining Permits, arguing that: (1) The PMRB of Bulacan erred in giving due course to the Applications for Small-Scale Mining Permit without first resolving its formal protest; (2) The areas covered by the Small-Scale Mining Permits fall within the area covered by AMTC's valid prior Application for Exploration Permit; (3) The Applications for Quarry Permit were illegally converted to Applications for Small-Scale Mining Permit; (4) DENR-MGB Director Horacio C. Ramos' ruling that the subject areas became

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[9] Comment of Respondents, *id.* at 74.

[10] Annex "B", *id.* at 25.

[11] Annexes "D" to "D-3", *id.* at 30-33.

[12] Annexes "E" to "E-3", *id.* at 34-49.

open for mining location only on August 11, 2004 was controlling; (5) The Small-Scale Mining Permits were null and void because they covered areas that were never declared People's Small-Scale Mining Program sites as mandated by Section 4 of the People's Small-Scale Mining Act of 1991; and (6) Iron ore is not considered as one of the quarry resources, as defined by Section 43 of the Philippine Mining Act of 1995, which could be subjects of an Application for Quarry Permit.[13]

On August 8, 2006, respondent DENR Secretary rendered a Decision[14] in favor of AMTC. The DENR Secretary agreed with MGB Director Horacio C. Ramos that the area was open to mining location only on August 11, 2004, fifteen (15) days after the receipt by Golden Falcon on July 27, 2004 of a copy of the MGB-Central Office's Order dated July 16, 2004, which Order denied Golden Falcon's appeal. According to the DENR Secretary, the filing by Golden Falcon of the letter-appeal suspended the finality of the Order of denial issued on April 29, 1998 by the Regional Director until the resolution of the appeal on July 16, 2004 by the MGB-Central Office. He stated that the Applications for Quarry Permit were filed on February 10, 2004 when the area was still closed to mining location; hence, the Small-Scale Mining Permits granted by the PMRB and the Governor were null and void. On the other hand, the DENR Secretary declared that AMTC filed its Application for Exploration Permit when the area was already open to other mining applicants; thus, AMTC's Application for Exploration Permit was valid. Moreover, the DENR Secretary held that the questioned Small-Scale Mining Permits were issued in violation of Section 4 of R.A. No. 7076 and beyond the authority of the Provincial Governor pursuant to Section 43 of R.A. No. 7942, because the area was never proclaimed to be under the People's Small-Scale Mining Program. Further, the DENR Secretary stated that iron ore mineral is not considered among the quarry resources.

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[13] Decision of the DENR Secretary, *id.* at 56.

[14] *Rollo*, p. 53.

The dispositive portion of the DENR Secretary's Decision reads:

> WHEREFORE, the Application for Exploration Permit, AEP-III-02-04 of Atlantic Mines and Trading Corp. is declared valid and may now be given due course. The Small-Scale Mining Permits, SSMP-B-002-05 of Gerardo Cruz, SSMP-B-003-05 of Eduardo D. Mercado, SSMP-B-004-05 of Benedicto S. Cruz and SSMP-B-005-05 of Lucila S. Valdez are declared **NULL AND VOID.** Consequently, the said permits are hereby **CANCELLED.**[15]

Hence, petitioner League of Provinces filed this petition.

Petitioner is a duly organized league of local governments incorporated under R.A. No. 7160. Petitioner declares that it is composed of 81 provincial governments, including the Province of Bulacan. It states that this is not an action of one province alone, but the collective action of all provinces through the League, as a favorable ruling will not only benefit one province, but all provinces and all local governments.

Petitioner raises these issues:

I

WHETHER OR NOT SECTION 17(B)(3)(III) OF THE, 1991 LOCAL GOVERNMENT CODE AND SECTION 24 OF THE PEOPLE'S SMALL-SCALE MINING ACT OF 1991 ARE UNCONSTITUTIONAL FOR PROVIDING FOR EXECUTIVE CONTROL AND INFRINGING UPON THE LOCAL AUTONOMY OF PROVINCES.

II

WHETHER OR NOT THE ACT OF RESPONDENT [DENR] IN NULLIFYING, VOIDING AND CANCELLING THE SMALL-SCALE MINING PERMITS AMOUNTS TO EXECUTIVE CONTROL, NOT MERELY SUPERVISION AND USURPS THE DEVOLVED POWERS OF ALL PROVINCES.[16]

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[15] *Id.* at 58-59. (Emphasis in the original.)

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

To start, the Court finds that petitioner has legal standing to file this petition because it is tasked under Section 504 of the Local Government Code of 1991 to promote local autonomy at the provincial level;[17] adopt measures for the promotion of the welfare of all provinces and its officials and employees;[18] and exercise such other powers and perform such other duties and functions as the league may prescribe for the welfare of the provinces.[19]

Before this Court determines the validity of an act of a co-equal and coordinate branch of the Government, it bears emphasis that ingrained in our jurisprudence is the time-honored principle that a statute is presumed to be valid.[20] This presumption is rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts.[21] This Court, however, may declare a law, or portions thereof, unconstitutional where a petitioner has shown a clear and unequivocal breach of the Constitution,[22] leaving no doubt or hesitation in the mind of the Court.[23]

In this case, petitioner admits that respondent DENR Secretary had the authority to nullify the Small-Scale Mining Permits issued by the Provincial Governor of Bulacan, as the DENR Secretary has control over the PMRB, and the implementation of the Small-Scale Mining Program is subject to control by respondent DENR.

Control of the DENR/DENR Secretary over small-scale mining in the provinces is granted by three statutes: (1) R.A. No. 7061

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[17] R.A. No. 7160, Section 504 (b).

[18] R.A. No. 7160, Section 504 (c).

[19] R.A. No. 7160, Section 504 (h).

[20] *Coconut Oil Refiners Association, Inc. v. Torres*, G.R. No. 132527, July 29, 2005, 465 SCRA 47, 62; 503 Phil. 43, 53 (2005).

[21] *Id.* at 62-63; *id.*

[22] *Id.* at 63; *id.* at 54.

[23] *Id.*; *id.*

or *The Local Government Code of 1991*; (2) R.A. No. 7076 or the *People's Small Scale Mining Act of 1991*; and (3) R.A. No. 7942, otherwise known as the *Philippine Mining Act of 1995*.[24] The pertinent provisions of law sought to be declared as unconstitutional by petitioner are as follows:

R.A. No. 7061 (The Local Government Code of 1991)

SEC. 17. *Basic Services and Facilities.* - (a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. **Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein**.

(b) Such basic services and facilities include, but are not limited to, the following:

x x x x x x x x x

(3) For a Province:

x x x x x x x x x

(iii) Pursuant to national policies and subject to supervision, control and review of the DENR, **enforcement of** forestry laws limited to community-based forestry projects, pollution control law, **small-scale mining law**, and other laws on the protection of the environment; and mini-hydro electric projects for local purposes; x x x[25]

R.A. No. 7076 (People's Small-Scale Mining Act of 1991)

Sec. 24. *Provincial/City Mining Regulatory Board.* - There is hereby created **under the direct supervision and control of the Secretary** a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department,

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[24] Sec. 42. *Small-Scale Mining.* – Small-scale mining shall continue to be governed by Republic Act No. 7076 and other pertinent laws.

[25] Emphasis supplied.

and shall exercise the following powers and functions, **subject to review by the Secretary**:

(a) Declare and segregate existing gold-rush areas for small-scale mining;
(b) Reserve future gold and other mining areas for small-scale mining;
(c) Award contracts to small-scale miners;
(d) Formulate and implement rules and regulations related to small-scale mining;
(e) Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small-mining; and
(f) Perform such other functions as may be necessary to achieve the goals and objectives of this Act.[26]

Petitioner contends that the aforecited laws and DENR Administrative Order No. 9640 (the Implementing Rules and Regulations of the Philippine Mining Act of 1995) did not explicitly confer upon respondents DENR and the DENR Secretary the power to reverse, abrogate, nullify, void, or cancel the permits issued by the Provincial Governor or small-scale mining contracts entered into by the PMRB. The statutes are also silent as to the power of respondent DENR Secretary to substitute his own judgment over that of the Provincial Governor and the PMRB.

Moreover, petitioner contends that Section 17 (b)(3)(iii) of the Local Government Code of 1991 and Section 24 of R.A. No. 7076, which confer upon respondents DENR and the DENR Secretary the power of control are unconstitutional, as the Constitution states that the President (and Executive Departments and her alter-egos) has the power of supervision only, not control, over acts of the local government units, and grants the local government units autonomy, thus:

The 1987 Constitution:

Article X, Section 4. **The President of the Philippines shall exercise general supervision over local governments**. Provinces with

[26] Emphasis supplied.

respect to component cities and municipalities, and cities and municipalities with respect to component *barangays*, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.[27]

Petitioner contends that the policy in the above-cited constitutional provision is mirrored in the Local Government Code, which states:

SEC. 25. *National Supervision over Local Government Units*. - (a) Consistent with the basic policy on local autonomy, **the President shall exercise general supervision over local government units to ensure that their acts are within the scope of their prescribed powers and functions**.

The President shall exercise supervisory authority directly over provinces, highly urbanized cities, and independent component cities; through the province with respect to component cities and municipalities; and through the city and municipality with respect to *barangays*.[28]

Petitioner contends that the foregoing provisions of the Constitution and the Local Government Code of 1991 show that the relationship between the President and the Provinces or respondent DENR, as the alter ego of the President, and the Province of Bulacan is one of executive supervision, not one of executive control. The term "control" has been defined as the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his/her duties and to substitute the judgment of the former for the latter, while the term "supervision" is the power of a superior officer to see to it that lower officers perform their function in accordance with law.[29]

Petitioner argues that respondent DENR Secretary went beyond mere executive supervision and exercised control when

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[27] Emphasis supplied.

[28] Emphasis supplied.

[29] Citing *National Liga Ng Mga Barangay v. Paredes*, G.R. Nos. 130775 and 131939, September 27, 2004, 439 SCRA 130; 482 Phil. 331 (2004).

he nullified the small-scale mining permits granted by the Provincial Governor of Bulacan, as the former substituted the judgment of the latter.

Petitioner asserts that what is involved here is a devolved power. Under the Local Government Code of 1991, the power to regulate small-scale mining has been devolved to all provinces. In the exercise of devolved powers, departmental approval is not necessary.[30]

Petitioner contends that if the provisions in Section 24 of R.A. No. 7076 and Section 17 (b)(3)(iii) of the Local Government Code of 1991 granting the power of control to the DENR/DENR Secretary are not nullified, nothing would stop the DENR Secretary from nullifying, voiding and canceling the small-scale mining permits that have been issued by a Provincial Governor.

Petitioner submits that the statutory grant of power of control to respondents is unconstitutional, as the Constitution only allows supervision over local governments and proscribes control by the executive departments.

In its Comment, respondents, represented by the Office of the Solicitor General, stated that contrary to the assertion of petitioner, the power to implement the small-scale mining law is expressly limited in Section 17 (b)(3)(iii) of the Local Government Code, which provides that it must be carried out "pursuant to national policies and subject to supervision, control and review of the DENR." Moreover, the fact that the power to implement the small-scale mining law has not been fully devolved to provinces is further amplified by Section 4 of the People's Small-Scale Mining Act of 1991, which provides, among others, that the People's Small-Scale Mining Program shall be implemented by the DENR Secretary.

The petition lacks merit.

Paragraph 1 of Section 2, Article XII (National Economy

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[30] Citing *Tano v. Socrates*, G.R. No. 110249, August 21, 1997, 278 SCRA 154; 343 Phil. 670 (1997).

and Patrimony) of the Constitution[31] provides that "[t]he exploration, development and utilization of natural resources shall be under the full control and supervision of the State."

Moreover, paragraph 3 of Section 2, Article XII of the Constitution provides that "[t]he **Congress** may, by law, allow small-scale utilization of natural resources by Filipino citizens x x x."

Pursuant to Section 2, Article XII of the Constitution, R.A. No. 7076 or the *People's Small-Scale Mining Act of 1991*, was enacted, **establishing under Section 4 thereof a People's Small-Scale Mining Program to be implemented by the DENR Secretary in coordination with other concerned government agencies.**

The *People's Small-Scale Mining Act of 1991* defines "small-scale mining" as "refer[ring] to mining activities, which rely heavily on manual labor using simple implement and methods and do not use explosives or heavy mining equipment."[32]

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[31] The Constitution, Article XII, Section 2. — All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.** The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

x x x x x x x x x

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons. (Emphases supplied.)

[32] R.A. No. 7076, Sec. 2.

It should be pointed out that the Administrative Code of 1987[33] provides that the DENR is, subject to law and higher authority, in charge of carrying out the State's constitutional mandate, under Section 2, Article XII of the Constitution, to control and supervise the exploration, development, utilization and conservation of the country's natural resources. Hence, the enforcement of small-scale mining law in the provinces is made subject to the supervision, control and review of the DENR under the Local Government Code of 1991, while the People's Small-Scale Mining Act of 1991 provides that the People's Small-Scale Mining Program is to be implemented by the DENR Secretary in coordination with other concerned local government agencies.

Indeed, Section 4, Article X (Local Government) of the Constitution states that "[t]he President of the Philippines shall exercise general supervision over local governments," and Section 25 of the Local Government Code reiterates the same. General supervision by the President means no more than seeing to it that laws are faithfully executed or that subordinate officers act within the law.[34]

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[33] The Administrative Code of 1987, Title XIV, Chapter 1:

SEC. 1. *Declaration of Policy*. – (1) The State shall ensure, for the benefit of the Filipino people, the full exploration and development as well as the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources, consistent with the necessity of maintaining a sound ecological balance and protecting and enhancing the quality of the environment and the objective of making the exploration, development and utilization of such natural resources equitably accessible to the different segments of the present as well as future generations.

x x x x x x x x x

SEC. 2. *Mandate*. — (1) The Department of Environment and Natural Resources shall be primarily responsible for the implementation of the foregoing policy.

(2) It shall, subject to law and higher authority, be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization and conservation of the country's natural resources. (Emphasis supplied)

[34] Fr. Joaquin G. Bernas, S.J., *The Constitution of the Philippines A Commentary*, Vol. II, © 1988, p. 379, citing III RECORD 451-452.

The Court has clarified that the constitutional guarantee of local autonomy in the Constitution [Art. X, Sec. 2] refers to the *administrative* autonomy of local government units or, cast in more technical language, the decentralization of government authority.[35] It does not make local governments sovereign within the State.[36] Administrative autonomy may involve devolution of powers, but subject to limitations like following national policies or standards,[37] and those provided by the Local Government Code, as the structuring of local governments and the allocation of powers, responsibilities, and resources among the different local government units and local officials have been placed by the Constitution in the hands of Congress[38] under Section 3, Article X of the Constitution.

Section 3, Article X of the Constitution mandated Congress to "enact **a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization** with effective mechanisms of recall, initiative, and referendum, **allocate among the different local government units their powers, responsibilities, and resources, and provide for the** qualifications, election, appointment and removal, term, salaries, **powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units**."

In connection with the enforcement of the small-scale mining law in the province, Section 17 of the Local Government Code provides:

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[35] *Cordillera Board Coalition v. Commission on Audit*, G.R. No. 79956, January 29, 1990, 181 SCRA 495.

[36] *Basco v. Philippine Amusements and Gaming Corporation*, G.R. No. 91649, May 14, 1991, 197 SCRA 52.

[37] Jose N. Nolledo, *The Local Government Code of 1991 Annotated*, 2004 edition, p. 10.

[38] Fr. Joaquin G. Bernas, S.J.., *The Constitution of the Philippines A Commentary*, Vol. II, © 1988, *supra* note 34, at 377.

> **SEC. 17.** ***Basic Services and Facilities.*** - (a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. **Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein**.
>
> **(b) Such basic services and facilities include, but are not limited to, the following**:
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> xxx xxx xxx
>
> **(3) For a Province:c**
>
> xxx xxx xxx
>
> (iii) **Pursuant to national policies and subject to supervision, control and review of the DENR**, **enforcement of** forestry laws limited to community-based forestry projects, pollution control law, **small-scale mining law**, and other laws on the protection of the environment; and mini-hydro electric projects for local purposes;[39]

Clearly, the Local Government Code did not fully devolve the enforcement of the small-scale mining law to the provincial government, as its enforcement is subject to the supervision, control and review of the DENR, which is in charge, subject to law and higher authority, of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization of the country's natural resources.[40]

Section 17 (b)(3)(iii) of the Local Government Code of 1991 is in harmony with R.A. No. 7076 or the *People's Small-Scale Mining Act of 1991*,[41] which established a People's Small-

[39] Emphases supplied.

[40] The Administrative Code of 1987, Title XIV (Environment and Natural Resources), Chapter 1, Section 2 (2).

[41] R.A. No. 7076 was approved on June 27, 1991 and took effect on July 19, 1991.

Scale Mining Program to be implemented by the Secretary of the DENR, thus:

Sec. 2. *Declaration of Policy*. – It is hereby declared of the State to promote, develop, protect and rationalize viable small-scale mining activities in order to generate more employment opportunities and provide an equitable sharing of the nation's wealth and natural resources, giving due regard to existing rights as herein provided.

x x x x x x x x x

Sec. 4. People's Small-Scale Mining Program. - For the purpose of carrying out the declared policy provided in Section 2 hereof, **there is hereby established a People's Small-Scale Mining Program to be implemented by the Secretary of the Department of Environment and Natural Resources, hereinafter called the Department, in coordination with other concerned government agencies,** designed to achieve an orderly, systematic and rational scheme for the small-scale development and utilization of mineral resources in certain mineral areas in order to address the social, economic, technical, and environmental problems connected with small-scale mining activities.

x x x x x x x x x

Sec. 24. Provincial/City Mining Regulatory Board. – There is hereby created **under the direct supervision and control of the Secretary** a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department, and shall exercise the following powers and functions, **subject to review by the Secretary**:

(a) Declare and segregate existing gold-rush areas for small-scale mining;
(b) Reserve future gold and other mining areas for small-scale mining;
(c) Award contracts to small-scale miners;
(d) Formulate and implement rules and regulations related to small-scale mining;
(e) Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small-mining; and

(f) Perform such other functions as may be necessary to achieve the goals and objectives of this Act.[42]

DENR Administrative Order No. 34, series of 1992, containing the Rules and Regulations to implement R.A. No. 7076, provides:

SEC. 21. ***Administrative Supervision over the People's Small-Scale Mining Program.*** —The following DENR officials shall exercise the following supervisory functions in the implementation of the Program:

21.1 **DENR Secretrary – direct supervision and control over the program** and activities of the small-scale miners within the people's small-scale mining area;

21.2 Director —the Director shall:

a. Recommend the depth or length of the tunnel or adit taking into account the: (1) size of membership and capitalization of the cooperative; (2) size of mineralized areas; (3) quantity of mineral deposits; (4) safety of miners; and (5) environmental impact and other considerations;

b. Determine the right of small-scale miners to existing facilities in consultation with the operator, claimowner, landowner or lessor of an affected area upon declaration of a small-scale mining area;

c. Recommend to the Secretary the withdrawal of the status of the people's small-scale mining area when it can no longer be feasibly operated on a small-scale basis; and

d. See to it that the small-scale mining contractors abide by small-scale mines safety rules and regulations.

x x x x x x x x x

SEC. 22. ***Provincial/City Mining Regulatory Board***. —The Provincial/City Mining Regulatory Board created under R.A. 7076 shall exercise the following powers and functions, **subject to review by the Secretary**:

22.1 Declares and segregates existing gold rush area for small-scale mining;

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[42] Emphases supplied.

22.2 Reserves for the future, mineralized areas/mineral lands for people's small-scale mining;
22.3 Awards contracts to small-scale miners' cooperative;
22.4 Formulates and implements rules and regulations related to R.A. 7076;
22.5 Settles disputes, conflicts or litigations over conflicting claims within ninety (90) days upon filing of protests or complaints; Provided, That any aggrieved party may appeal within five (5) days from the Board's decision to the Secretary for final resolution otherwise the same is considered final and executory; and
22.6 Performs such other functions as may be necessary to achieve the goals and objectives of R.A. 7076.

SEC. 6. ***Declaration of People's Small-Scale Mining Areas.*** – The Board created under R.A. 7076 shall have the authority to declare and set aside People's Small-Scale Mining Areas in sites onshore suitable for small-scale mining operations **subject to review by the DENR Secretary** thru the Director.[43]

DENR Administrative Order No. 23, otherwise known as the *Implementing Rules and Regulations of R.A. No. 7942, otherwise known as the Philippine Mining Act of 1995*, adopted on August 15, 1995, provides under Section 123[44] thereof that small-scale mining applications should be filed with the PMRB[45] and the corresponding permits shall be issued by the

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[43] Emphases supplied.

[44] DENR Administrative Order No. 95-936, SEC. 123. *General Provisions*. —Small-scale mining applications shall be filed with, processed and evaluated by the Provincial/City Mining Regulatory Board concerned and the corresponding permits to be issued by the Provincial/City Mayor concerned except small-scale mining applications within the mineral reservations which shall be filed, processed and evaluated by the Bureau and the corresponding permit to be issued by the Director.

x x x [T]he implementing rules and regulations of R.A. No. 7076, insofar as they are not inconsistent with the provisions of these implementing rules and regulations, shall continue to govern small-scale mining operations. (Emphasis supplied.)

[45] SEC. 23. *Composition of the Provincial/City Mining Regulatory Board*. – The Board shall be composed of the following:

Provincial Governor, except small-scale mining applications within the mineral reservations.

Thereafter, DENR Administrative Order No. 96-40, otherwise known as the *Revised Implementing Rules and Regulations of R.A. No. 7942, otherwise known as the Philippine Mining Act of 1995*, adopted on December 19, 1996, provides that applications for Small-Scale Mining Permits shall be filed with the Provincial Governor/City Mayor through the concerned Provincial/City Mining Regulatory Board for areas outside the Mineral Reservations and with the Director though the Bureau for areas within the Mineral Reservations.[46] Moreover, it provides that Local Government Units shall, in coordination with the Bureau/ Regional Office(s) and subject to valid and existing mining rights, "approve applications for small-scale mining, sand and gravel, quarry x x x and gravel permits not exceeding five (5) hectares."[47]

Petitioner contends that the Local Government Code of 1991, R.A. No. 7076, DENR Administrative Orders Nos. 95-23 and 96-40 granted the DENR Secretary the broad statutory power of control, but did not confer upon the respondents DENR and DENR Secretary the power to reverse, abrogate, nullify, void, cancel the permits issued by the Provincial Governor or small-scale mining contracts entered into by the Board.

The contention does not persuade.

23.1 Representative from the DENR Regional Office concerned—Chairman;

23.2 Governor or City Mayor or their duly authorized representative—Member

23.3 One (1) Small-Scale mining representative—Member or as per Section 24.3 hereof;

23.4 One (1) Large-Scale mining representative—Member;

23.5 One (1) representative from a nongovernment organization—Member; and

23.6 Staff support to the Board to be provided by the Department.

[46] DENR Administrative Order No. 96-40, Chapter IX, Section 103.

[47] DENR Administrative Order No. 96-40, Chapter 1, Section 8.

The settlement of disputes over conflicting claims in small-scale mining is provided for in Section 24 of R.A. No. 7076, thus:

> **Sec. 24.** ***Provincial/City Mining Regulatory Board.*** **—** There is hereby created under the direct supervision and control of the Secretary a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department, and shall exercise the following powers and functions, subject to review by the Secretary:
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> x x x x x x x x x
>
> (e) Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small mining area; x x x

Section 24, paragraph (e) of R.A. No. 7076 cited above is reflected in Section 22, paragraph 22.5 of the Implementing Rules and Regulations of R.A. No. 7076, to wit:

> **SEC. 22.** *Provincial/City Mining Regulatory Board.* – The Provincial/City Mining Regulatory Board created under R.A. No. 7076 shall exercise the following powers and functions, subject to review by the Secretary:
>
> x x x x x x x x x
>
> 22.5 Settles disputes, conflicts or litigations over conflicting claims within ninety (90) days upon filing of protests or complaints; *Provided*, That any aggrieved party may appeal within five (5) days from the Board's decision to the Secretary for final resolution otherwise the same is considered final and executory; x x x

In this case, in accordance with Section 22, paragraph 22.5 of the Implementing Rules and Regulations of R.A. No. 7076, the AMTC filed on July 22, 2005 with the PMRB of Bulacan a formal protest against the Applications for Quarry Permits of Eduardo Mercado, Benedicto Cruz, Liberato Sembrano (replaced by Lucila Valdez) and Gerardo Cruz on the ground that the subject area was already covered by its Application for Exploration Permit.[48] However, on August 8, 2005, the

[48] Decision of the DENR Secretary, *rollo*, pp. 2-3.

PMRB issued Resolution Nos. 05-8, 05-9, 05-10 and 05-11, resolving to submit to the Provincial Governor of Bulacan the Applications for Small-Scale Mining Permits of Eduardo Mercado, Benedicto Cruz, Lucila Valdez and Gerardo Cruz for the granting/issuance of the said permits.[49] On August 10, 2005, the Provincial Governor of Bulacan issued the Small-Scale Mining Permits to Eduardo Mercado, Benedicto Cruz, Lucila Valdez and Gerardo Cruz based on the legal opinion of the Provincial Legal Officer and the Resolutions of the PMRB of Bulacan.

Hence, AMTC filed an appeal with respondent DENR Secretary, appealing from Letter-Resolution No. 05-1317 and Resolution Nos. 05-08, 05-09, 05-10 and 05-11, all dated August 8, 2005, of the PMRB of Bulacan, which resolutions gave due course and granted, on August 10, 2005, Small-Scale Mining Permits to Eduardo D. Mercado, Benedicto S. Cruz, Lucila Valdez and Gerardo Cruz involving parcels of mineral land situated at Camachin, Doña Remedios Trinidad, Bulacan.

The PMRB of Bulacan filed its Answer, stating that it is an administrative body, created under R.A. No. 7076, which cannot be equated with the court wherein a full-blown hearing could be conducted, but it is enough that the parties were given the opportunity to present evidence. It asserted that the questioned resolutions it issued were in accordance with the mining laws and that the Small-Scale Mining Permits granted were registered ahead of AMTC's Application for Exploration Permit. Further, the Board stated that the Governor of Bulacan had the power to approve the Small-Scale Mining Permits under R.A. No. 7160.

The DENR Secretary found the appeal meritorious, and resolved these pivotal issues: (1) when is the subject mining area open for mining location by other applicants; and (2) who among the applicants have valid applications. The pertinent portion of the decision of the DENR Secretary reads:

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[49] Annexes "C" to "C-3", *id.* at 26-29.

We agree with the ruling of the MGB Director that the area is [open only] to mining location on August 11, 2004, fifteen (15) days after the receipt by Golden Falcon on July 27, 2004 of a copy of the subject Order of July 16, 2004. The filing by Golden Falcon of the letter-appeal suspended the finality of the Order of Denial issued on April 29, 1998 by the Regional Director until the Resolution thereof on July 16, 2004.

Although the subject AQPs/SSMPs were processed in accordance with the procedures of the PMRB, however, the AQPs were filed on February 10, 2004 when the area is still closed to mining location. Consequently, the SSMPs granted by the PMRB and the Governor are null and void making thereby AEP No. III-02-04 of the AMTC valid, it having been filed when the area is already open to other mining applicants.

Records also show that the AQPs were converted into SSMPs. These are two (2) different applications. The questioned SSMPs were issued in violation of Section 4 of RA 7076 and beyond the authority of the Provincial Governor pursuant to Section 43 of RA 7942 because the area was never proclaimed as "People's Small-Scale Mining Program." Moreover, iron ore mineral is not considered among the quarry resources.

x x x x x x x x x

WHEREFORE, the Application for Exploration Permit, AEP-III-02-04 of Atlantic Mines and Trading Corp. is declared valid and may now be given due course. The Small-Scale Mining Permits, SSMP-B-002-05 of Gerardo Cruz, SSMP-B-003-05 of Eduardo D. Mercado, SSMP-B-004-05 of Benedicto S. Cruz and SSMP-B-005-05 of Lucila S. Valdez are declared **NULL AND VOID.** Consequently, the said permits are hereby **CANCELLED.**[50]

The Court finds that the decision of the DENR Secretary was rendered in accordance with the power of review granted to the DENR Secretary in the resolution of disputes, which is provided for in Section 24 of R.A. No. 7076[51] and Section 22

[50] *Rollo*, pp. 57-58. (Emphasis supplied)

[51] **Sec. 24.** ***Provincial/City Mining Regulatory Board.*** **—**There is hereby created **under the direct supervision and control of the Secretary** a provincial/city mining regulatory board, herein called the Board, which shall be the implementing agency of the Department, and shall exercise the following powers and functions, **subject to review by the Secretary**:

of its Implementing Rules and Regulations.[52] It is noted that although AMTC filed a protest with the PMRB regarding its superior and prior Application for Exploration Permit over the Applications for Quarry Permit, which were converted to Small-Scale Mining Permits, the PMRB did not resolve the same, but issued Resolution Nos. 05-08 to 05-11 on August 8, 2005, resolving to submit to the Provincial Governor of Bulacan the Applications for Small-Scale Mining Permits of Eduardo Mercado, Benedicto Cruz, Lucila Valdez and Gerardo Cruz for the granting of the said permits. After the Provincial Governor of Bulacan issued the Small-Scale Mining Permits on August 10, 2005, AMTC appealed the Resolutions of the PMRB giving due course to the granting of the Small-Scale Mining Permits by the Provincial Governor.

Hence, the decision of the DENR Secretary, declaring that the Application for Exploration Permit of AMTC was valid and may be given due course, and canceling the Small-Scale Mining Permits issued by the Provincial Governor, emanated from the power of review granted to the DENR Secretary under R.A. No. 7076 and its Implementing Rules and Regulations. The DENR Secretary's power to review and, therefore, decide, in this case, the issue on the validity of the issuance of the Small-Scale Mining Permits by the Provincial Governor as recommended by the PMRB, is a quasi-judicial function, which involves the determination of what the law is, and what the

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x x x x x x x x x

(e) Settle disputes, conflicts or litigations over conflicting claims within a people's small-scale mining area, an area that is declared a small-mining area; and x x x (Emphasis supplied.)

[52] **SEC. 22.** ***Provincial/City Mining Regulatory Board.*** **–** The Provincial/City Mining Regulatory Board created under R.A. No. 7076 shall exercise the following powers and functions, subject to review by the Secretary:

x x x x x x x x x

22.5 Settles disputes, conflicts or litigations over conflicting claims within ninety (90) days upon filing of protests or complaints; *Provided*, That any aggrieved party may appeal within five (5) days from the Board's decision to the Secretary for final resolution otherwise the same is considered final and executory; x x x

legal rights of the contending parties are, with respect to the matter in controversy and, on the basis thereof and the facts obtaining, the adjudication of their respective rights.[53] The DENR Secretary exercises quasi-judicial function under R.A. No. 7076 and its Implementing Rules and Regulations to the extent necessary in settling disputes, conflicts or litigations over conflicting claims. This quasi-judicial function of the DENR Secretary can neither be equated with "substitution of judgment" of the Provincial Governor in issuing Small-Scale Mining Permits nor "control" over the said act of the Provincial Governor as it is a determination of the rights of AMTC over conflicting claims based on the law.

In determining whether Section 17 (b)(3)(iii) of the Local Government Code of 1991 and Section 24 of R.A. No. 7076 are unconstitutional, the Court has been guided by ***Beltran v. The Secretary of Health***,[54] which held:

> The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. Every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt. Those who petition this Court to declare a law, or parts thereof, unconstitutional must clearly establish the basis therefor. Otherwise, the petition must fail.[55]

In this case, the Court finds that the grounds raised by petitioner to challenge the constitutionality of Section 17 (b)(3)(iii) of the Local Government Code of 1991 and Section 24 of R.A. No.7076 failed to overcome the constitutionality of the said provisions of law.

WHEREFORE, the petition is **DISMISSED** for lack of merit.

No costs.

[53] *Doran v. Luczon, Jr.*, G.R. No. 151344, September 26, 2006, 503 SCRA 106.

[54] G.R. Nos. 133640, 133661, and 139147, November 25, 2005, 476 SCRA 168.

[55] *Beltran v. Secretary of Health, supra*, at 199-200.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Sereno, C.J., and *Leonen, J.,* see concurring opinions.

CONCURRING OPINION

SERENO, *C.J.*:

I concur in the result. However, there appears to be a need to address the issue of whether petitioner League of Provinces of the Philippines has legal standing to assail the constitutionality of the subject laws.

Petitioner is a duly organized league of local governments incorporated under Republic Act No. 7610, otherwise known as the Local Government Code. It claims that it is composed of 81 local governments, including the province of Bulacan. It further claims that the instant case is a collective action of all provinces – in that, a favorable ruling will not only benefit the province of Bulacan, but also all the other provinces and local governments.

The *ponencia* upheld petitioner's legal standing to file this petition because the latter is tasked, under Section 504 of the Local Government Code, to promote local autonomy at the provincial level, adopt measures for the promotion of the welfare of all provinces and its officials and employees, and exercise such other powers and perform such duties and functions as the league may prescribe for the welfare of the provinces.

I concur that the League has legal standing to assail the constitutionality of the subject laws.

A divergent position had been advanced by Justice Marvic M.V.F. Leonen. He says that, "[i]n case of a **citizen's suit**, the 'interest of the person assailing the constitutionality of a statute must be direct and personal. He must be able to show,

not only that the law is invalid, but also that he has 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**.'"[1] He further claims that, "[A]s an organization that represents all provinces, it did not suffer an **actual injury** or an **injury in fact**, resulting from the implementation of the subject provisions."[2] He, therefore, concludes that the League has no standing to assail the constitutionality of the subject laws.

A public action is a suit brought to vindicate a right belonging to the public *qua* public. Based on present jurisprudence, except in cases involving issues of transcendental importance,[3] it can only be brought by the proper representative of the public – one who has standing. Generally, the one who has standing is the one who suffered or immediately stands to suffer actual injury or injury in fact.[4] Injury in fact means damage that is distinct from those suffered by the public.[5] This is different from legal injury or injury in law, which results from a violation of a right belonging to a person.[6]

The divergent position appears to confuse the general requirement for standing with standing in citizens' suits. The latter normally presupposes that there is no one who suffered

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[1] Emphases supplied.

[2] Emphases supplied.

[3] *David v. Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, 171424, 03 May 2006 citing *Araneta v. Dinglasan*, 84 Phil. 368 (1949); *Aquino v. Comelec*, G.R. No. L- 40004, 31 January 1975, 62 SCRA 275; *Chavez v. Public Estates Authority*, G.R. No. 133250, 09 July 2002, 384 SCRA 152; *Bagong Alyansang Makabayan v. Zamora*, G.R. Nos. 138570, 138572, 138587, 138680, 138698, 10 October 2000, 342 SCRA 449; *Lim v. Executive Secretary*, G.R. No. 151445, 11 April 2002, 380 SCRA 739.

[4] *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970).

[5] Dissenting Opinion, *J.* Puno, *Kilosbayan, Inc. v. Guingona, Jr.*, G.R. No. 113375, 05 May 1994.

[6] *BPI Express Card Corp. v. Court of Appeals*, G.R. No. 120639, 25 September 1998.

injury in fact. Therefore, any citizen is allowed to bring the suit to vindicate the public's right. Instructive are the pronouncements of this Court in the seminal case of *Severino v. Governor-General*:[7]

> It is true, as we have stated, that **the right which he seeks, to enforce is not greater or different from that of any other qualified elector** in the municipality of Silay. It is also true that the injury which he would suffer in case he fails **to obtain the relief sought would not be greater or different from that of the other electors; but he is seeking to enforce a public right as distinguished from a private right. The real party in interest is the public**, or the qualified electors of the town of Silay. Each elector has the same right and would suffer the same injury. Each elector stands on the same basis with reference to maintaining a petition to determine whether or not the relief sought by the relator should be granted.
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> We are therefore of the opinion that the weight of authority supports the proposition that **the relator is a proper party to proceedings of this character when a public right is sought to be enforced.** If the general rule in America were otherwise, we think that it would not be applicable to the case at bar for the reason "that it is always dangerous to apply a general rule to a particular case without keeping in mind the reason for the rule, because, if under the particular circumstances the reason for the rule does not exist, the rule itself is not applicable and reliance upon the rule may well lead to error."
>
> No reason exists in the case at bar for applying the general rule insisted upon by counsel for the respondent. The circumstances which surround this case are different from those in the United States, inasmuch as **if the relator is not a proper party to these proceedings no other person could be**, as we have seen that it is not the duty of the law officer of the Government to appear and represent the people in cases of this character. (Emphasis supplied)

Also, the divergent position appears to confuse public actions with class suits (a species of private action) when it stated that "[p]rovinces do not have a common or general interest on matters related to mining that the League of Provinces can

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[7] 16 Phil. 366 (1910).

represent." Under Section 12 of Rule 3 of the Rules of Court, "common or general interest" is a requirement in class suits. It is not a requirement for standing in public actions.

Finally, the divergent position also appears to confuse the general requirement for standing and standing in citizens' suits, with organizational or associational standing. The latter does not require an association to suffer injury in fact. The question is whether such organization can bring a suit on behalf of its members who have suffered the injury in fact. In short, can the representatives of the public be themselves represented in a suit.

In this jurisdiction, we have acknowledged the standing of associations to sue on behalf of their members. In *Executive Secretary v. Court of Appeals*,[8] we held that:

> The modern view is that an association has standing to complain of injuries to its members. This view fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents.

Thus, based on jurisprudence, the League has legal standing to question the constitutionality of the subject laws, not only in behalf of the province of Bulacan, but also its other members.

Apart from jurisprudence, the League is also vested with statutory standing. The League of Provinces' primary purpose is clear from the provisions of the Local Government Code, *viz*:

> SEC. 502. *Purpose of Organization.* - There shall be an organization of all provinces to be known as the League of Provinces for **the primary purpose of ventilating, articulating and crystallizing issues affecting provincial and metropolitan political subdivision government administration, and securing, through proper and legal means, solutions thereto.** For this purpose, the Metropolitan Manila Area

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[8] G.R. No. 131719, 25 May 2004. See also *Kilusang Mayo Uno Labor Center v. Garcia,* G.R. No. 115381, 23 December 1994*; Holy Spirit Homeowners Association v. Defensor*, G.R. No. 163980, 03 August 2006.

and any metropolitan political subdivision shall be considered as separate provincial units of the league. (Emphasis supplied)

This purpose is further amplified by the grant to it of certain powers, functions and duties, which are, *viz*:

SEC. 504. *Powers, Functions and Duties of the League of Provinces.* - The league of provinces shall:

(a) Assist the national government in the formulation and implementation of the policies, programs and projects affecting provinces as a whole;

(b) Promote local autonomy at the provincial level;

(c) Adopt measures for the promotion of the welfare of all provinces and its officials and employees;

(d) Encourage peoples participation in local government administration in order to promote united and concerted action for the attainment of countrywide development goals;

(e) Supplement the efforts of the national government in creating opportunities for gainful employment within the province;

(f) Give priority to programs designed for the total development of the provinces in consonance with the policies, programs and projects of the national government;

(g) Serve as a forum for crystallizing and expressing ideas, seeking the necessary assistance of the national government and providing the private sector avenues for cooperation in the promotion of the welfare of the provinces; and

(h) Exercise such other powers and perform such other duties and functions as the league may prescribe for the welfare of the provinces and metropolitan political subdivisions.[9] (Emphasis supplied)

In *League of Cities of the Philippines v. COMELEC*,[10] this Court upheld the League of Cities' standing of the basis of Section 499 of the Local Government Code which tasks it with the "primary purpose of ventilating, articulating and

[9] Local Government Code.

[10] G.R. No. 176951, 18 November 2008.

crystallizing issues affecting city government administration and securing, through proper and legal means, solutions thereto."

Other instances of statutory standing can be found in: (1) the Constitution, which allows any citizen to challenge "the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof;"[11] (2) the Administrative Code wherein "[a]ny party aggrieved or adversely affected by an agency decision may seek judicial review;"[12] (3) the Civil Code which provides that "[i]f a civil action is brought by reason of the maintenance of a public nuisance, such action shall be commenced by the city or municipal mayor,"[13] and (4) the Rules of Procedure in Environmental Cases by which "[a]ny Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws."[14]

All told, to adopt the divergent position will destabilize jurisprudence and is tantamount to ignoring the clear mandate of law.

CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

This is a case of overlapping claims, which involve the application of the Mining Act, and the Small-Scale Mining Act. It is specific to the facts of this case, which are:

The Mines and Geosciences Bureau, Regional Office No. III (MGB R-III) denied Golden Falcon Mineral Exploration

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[11] Sec. 18, Article VII, 1987 Constitution.

[12] Sec. 25(2), Chapter 4, Book VII.

[13] Article 701.

[14] Section 5, A.M. No. 09-6-8-SC.

Corporation's (Golden Falcon) application for Financial and Technical Assistance Agreement (FTAA) on April 29, 1998 for failure to secure the required clearances.[1]

Golden Falcon appealed the denial with the Mines and Geosciences Bureau—Central Office (Central Office).[2] The appeal was denied only on July 16, 2004 or six years after Golden Falcon appealed.[3]

On February 10, 2004, pending Golden Falcon's appeal to the Central Office, certain persons filed with the Provincial Environment and Natural Resources Office (PENRO) of Bulacan their applications for quarry permit covering the same area subject of Golden Falcon's FTAA application.[4]

On September 13, 2004, after the Central Office denied Golden Falcon's appeal, Atlantic Mines and Trading Corporation (AMTC) filed an application for exploration permit covering the same subject area with the PENRO of Bulacan.[5]

Confusion of rights resulted from the overlapping applications of AMTC and the persons applying for quarry permits. The main question was when did the subject area become open for small scale mining applications. At that time, the provincial government did not question whether it had concurrent or more superior jurisdiction *vis-a-vis* the national government.

It was upon query by MGB R-III Director Arnulfo Cabantog that DENR-MGB Director Horacio Ramos stated that the denial of Golden Falcon's application became final fifteen days after the denial of its appeal to the Central Office or on August 11, 2004.[6] Hence, the area of Golden Falcon's application became open to permit applications only on that date.

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[1] *Rollo,* p. 54.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.* at 55.

After the MGB Director issued the statement, however, the Provincial Legal Officer of Bulacan, Atty. Eugenio F. Ressureccion issued a legal opinion on the issue, stating that the subject area became open for new applications on the date of the first denial on April 29, 1998.[7]

On the basis of the Provincial Legal Officer's opinion, Director Cabantog of MGB R-III endorsed the applications for quarry permit, now converted to applications for small-scale mining permit, to the Governor of Bulacan.[8] Later on, the Governor issued the small-scale mining permits.[9]

Upon appeal by the AMTC, the DENR Secretary declared as null the small-scale mining permits issued by the Governor on the ground that they have been issued in violation of Section 4 of R.A. No. 7076 and beyond the authority of the Governor.[10] According to the DENR Secretary, the area was never proclaimed to be under the small-scale mining program. [11] Iron ores also cannot be considered as a quarry resource.[12]

The question in this case is whether or not the provincial governor had the power to issue the subject permits.

The fact that the application for small-scale mining permit was initially filed as applications for quarry permits is not contested.

Quarry permits, however, may only be issued "on privately-owned lands and/or public lands for building and construction materials such as marble, basalt, andesite, conglomerate, tuff, adobe, granite, gabbro, serpentine, inset filling materials, clay for ceramic tiles and building bricks, pumice, perlite and other

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[7] *Id.*

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

[9] *Id.* at 56.

[10] *Id.* at 58.

[11] *Id.*

[12] *Id.*

similar materials..."[13] It may not be issued on "...resources that contain metals or metallic constituents and/or other valuable materials in economic quantities."[14]

Not only do iron ores fall outside the classification of any of the enumerated materials in Section 43 of the Mining Act, but iron is also a metal. It may not be classified as a quarry resource, hence, the provincial governor had no authority to issue the quarry permits in the first place. Probably realizing this error, the applications for quarry permit were converted to applications for small-scale mining permit.

Even so, the issuance of the small-scale mining permit was still beyond the authority of the provincial governor. Small-scale mining areas must first be declared and set aside as such before they can be made subject of small-scale mining rights.[15] The applications for small-scale mining permit, in this case, involved covered areas, which were never declared as people's small-scale mining areas. This is enough reason to deny an application for small-scale mining permit. Permits issued in disregard of this fact are void for having been issued beyond the authority of the issuing officer.

Therefore, there was no issue of local autonomy. The provincial governor did not have the competence to issue the questioned permits.

Neither does the League of Provinces have any standing to raise the present constitutional issue.

Locus standi is defined as "a right of appearance in a court of justice on a given question."[16] The fundamental question is "whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which

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[13] Republic Act. No. 7492, Sec. 43; *See also* Sec. 3(at). Mining Act.

[14] Republic Act. No. 7492, Sec. 3(at).

[15] Republic Act. No. 7076, Sec. 5. Small-Scale Mining Act.

[16] *David v. Macapagal-Arroyo,* 489 SCRA 160, 216 (2006) citing *Black's Law Dictionary,* 6th Ed. p.941 (1991).

sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[17]

In case of a citizens' suit, the "interest of the person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law is invalid, but also that he has 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."[18] In the case of *Telecommunications and Broadcast Attorneys of the Philippines, Inc. and GMA Network, Inc. v. COMELEC*, we said that a citizen who raises a constitutional question may only do so if s/he could show: (1) that s/he had personally suffered some **actual or threatened injury**; (2) that the actual or threatened injury was a result of an allegedly illegal conduct of the government; (3) that the injury is traceable to the challenged action; and (4) that the injury is likely to be redressed by a favorable action.[19]

The Petitioner League of Provinces' status as an organization of all provinces duty-bound to promote local autonomy[20] and adopt measures for the promotion of the welfare of provinces[21] does not clothe it with standing to question the constitutionality of the Section 17(b)(iii) of the Local Government Code and Section 24 of Rep. Act No. 7076 or the Small-Scale Mining Act.

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[17] *Galicto v. Aquino III*, G..R. No. 193978, February 28, 2012, 667 SCRA 150, 170.

[18] *Kilosbayan v. Morato*, G.R. No. 118910, November 16, 1995, 250 SCRA 130, 142, *citing Valmonte v. PCSO*, G.R. No. 78716, September 22, 1987.

[19] G.R. No. 132922, April 21, 1998, 289 SCRA 337 (This case was cited by Justice Mendoza in his separate opinion in *Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, et al.* [G.R. No. 141284, August 15, 2000, 336 SCRA 81] wherein he referred to actual or threatened injury as "injury in fact" of an actual or imminent nature. Expounding, he said that "[t]he 'injury in fact' test requires more than injury to a cognizable interest. It requires that the party seeking review be himself among those injured.").

[20] Republic Act. No. 7160, Sec. 504(b).

[21] Republic Act. No. 7160, Sec. 504(c).

As an organization that represents all provinces, it did not suffer an actual injury or an injury in fact, resulting from the implementation of the subject provisions. It cannot be said either that the provinces that Petitioner represents suffered the same injury when the Central Office nullified the permits issued by the Governor of Bulacan.

Provinces do not have a common or general interest on matters related to mining that the League of Provinces can represent. Each province has a particular interest to protect and claims to pursue that are separate and distinct from the others. Therefore, each is unique as to its reasons for raising issues to the Court. The League of Provinces cannot represent all provinces on mining-related issues. The perceived wrong suffered by the Province of Bulacan when the Central Office allegedly exercised control does not necessarily constitute a wrong suffered by the other provinces.

Furthermore, the Constitution provides for two types of local governance other than the national government: 1) The territorial and political subdivisions composed of provinces, cities, municipalities and *barangays*; and 2) autonomous regions.[22] The division of Article X of the Constitution distinguishes between their creation and relationship with the national government.

The creation of autonomous regions takes into consideration the "historical and cultural heritage, economic and social structures, and other relevant characteristics"[23] which its constituent geographical areas share in common. These factors are not considered in the creation of territorial and political subdivisions.

Autonomous regions are not only created by an act of the Congress. The Constitution also provides for a plebiscite requirement before the organic act that creates an autonomous region becomes effective.[24] This constitutes the creation of

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[22] CONSTITUTION, Article X, Sec. 1.

[23] CONSTITUTION, Art. X, Sec. 15.

[24] CONSTITUTION, Art. X, Sec. 18.

autonomous regions a direct act of the people. It means that the basic structure of an autonomous region, consisting of the executive department and legislative assembly, its special courts, and the provisions on its powers may not be easily amended or superseded by a simple act of the Congress.

Moreover, autonomous regions have powers, *e.g.* over their administrative organization, sources of revenues, ancestral domain, natural resources, personal, family and property relations, regional planning development, economic, social and tourism development, educational policies, cultural heritage and other matters.[25]

On the other hand, the creation of territorial and political subdivisions is subject to the Local Government Code enacted by the Congress without a plebiscite requirement.[26] While this does not disallow the inclusion of provisions requiring plebiscites in the creation of provinces, cities, and municipalities, the Local Government Code may be amended or superseded by another legislative act that removes such requirement. Their government structure, powers, and responsibilities, therefore, are always subject to amendment by legislative acts.

The territorial and political subdivisions and autonomous regions are granted autonomy under the Constitution.[27] The constitutional distinctions between them imply a clear distinction between the kinds of autonomy that they exercise.

The oft-cited case of *Limbona v. Mangelin*[28] penned by Justice Sarmiento distinguishes between two types of autonomy:

> …autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments 'more responsive

[25] CONSTITUTION, Art. X, Sec. 20.

[26] CONSTITUTION, Art. X, Sec. 3.

[27] CONSTITUTION, Art. X, Sec. 2 and Sec. 15.

[28] *Limbona v. Mangelin*, G.R. No. 80391, February 28, 1989, 170 SCRA 786.

and accountable,' and 'ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress'…

Decentralization of power, on the other hand, involves an abdication of political power in the favor of local governments units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to "self-immolation," since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency.

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An autonomous government that enjoys autonomy of the latter category [CONST. (1987), Art. X Sec. 15.] is subject alone to the decree of the organic act creating it and accepted principles on the effects and limits of "autonomy." On the other hand, an autonomous government of the former class is, as we noted, under the supervision of the national government acting through the President (and the Department of Local Government)…

I agree that autonomy, as phrased in Section 2 of Article X of the Constitution, which pertains to provinces, cities, municipalities and *barangays*, refers only to administrative autonomy.

In granting autonomy, the national government does not totally relinquish its powers.[29] The grant of autonomy does not make territorial and political subdivisions sovereign within the state or an "*imperium in imperio*."[30] The aggrupation of local government units and the creation of regional development councils in Sections 13 and 14 of Article X of the Constitution do not contemplate grant of discretion to create larger units with a recognized distinct political power that is parallel to the state. It merely facilitates coordination and exchange among them, still, for the purpose of administration.

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[29] See *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000, 336 SCRA 201 for discussion on the extent of local autonomy.

[30] *Basco, et al. v. PAGCOR*, G.R. No. 91649, May 14, 1991, 197 SCRA 52.

Territorial and political subdivisions are only allowed to take care of their local affairs so that governance will be more responsive and effective to their unique needs.[31] The Congress still retains control over the extent of powers or autonomy granted to them.

Therefore, when the national government invalidates an act of a territorial or political subdivision in the exercise of a power that is constitutionally and statutorily lodged to it, the territorial or political subdivision cannot complain that its autonomy is being violated. This is especially so when the extent of its autonomy under the Constitution or law does not include power or control over the matter, to the exclusion of the national government.

However, I do not agree that *Limbona v. Mangelin* correctly categorized the kind of autonomy that autonomous regions enjoy.

In that case, the court tried to determine the extent of self-government of autonomous governments organized under Presidential Decree No. 1618 on July 25, 1979. This is prior to the autonomous regions contemplated in the 1987 Constitution.

Autonomous regions are granted more powers and less intervention from the national government than territorial and political subdivisions. They are, thus, in a more asymmetrical relationship with the national government as compared to other local governments or any regional formation.[32] The Constitution grants them legislative powers over some matters, *e.g.* natural resources, personal, family and property relations, economic and tourism development, educational policies, that are usually

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[31] *Supra* note 29.

[32] CONSTITUTION, Art. X, Sec. 14 provides: "The President shall provide for regional development councils or other similar bodies composed of local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions for purposes of administrative decentralization to strengthen the autonomy of the units therein and to accelerate the economic and social growth and development of the units in the region."

under the control of the national government. However, they are still subject to the supervision of the President. Their establishment is still subject to the framework of the Constitution, particularly, Sections 15 to 21 of Article X, national sovereignty and territorial integrity of the Republic of the Philippines.

The exact contours of the relationship of the autonomous government and the national government are defined by legislation such as Republic Act No. 9054 or the Organic Act for the Autonomous Region in Muslim Mindanao. This is not at issue here and our pronouncements should not cover the provinces that may be within that autonomous region.

Considering the foregoing, I vote to **DISMISS** the petition.

EN BANC

[G.R. No. 187317. April 11, 2013]

CARLITO C. ENCINAS, *petitioner, vs.* **PO1 ALFREDO P. AGUSTIN, JR., and PO1 JOEL S. CAUBANG,*** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; ELEMENTS.— In *Yu v. Lim*, this Court enumerated the requisites of forum-shopping as follows: "Forum-shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded

* Should be designated as Fire Officer (FO)1 Alfredo P. Agustin and FO1 Joel S. Caubang.

on the same facts; and (3) **identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case**."

2. ID.; ID.; JUDGMENTS; *RES JUDICATA*; DEFINED.— *Res judicata* means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays down the rule that an existing final judgment or decree on the merits, rendered without fraud or collusion by a court of competent jurisdiction upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies in all other actions or suits, in the same or any other judicial tribunal of concurrent jurisdiction, on the points and matters in issue in the first suit.

3. ID.; ID.; ID.; ID.; REQUISITES.— In order that *res judicata* may bar the institution of a subsequent action, the following requisites must concur: (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be between the first and the second actions (i) identity of parties, (ii) identity of subject matter, and (iii) identity of cause of action.

4. ID.; ID.; ID.; JUDGMENT ON THE MERITS; DEFINED.— A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections;" or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point."

5. ID.; ID.; ID.; DOCTRINE OF *RES JUDICATA;* APPLIES ONLY TO JUDICIAL OR QUASI-JUDICIAL PROCEEDINGS.— The CA was correct in ruling that the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, and not to the exercise of administrative powers. Administrative powers here refer to those purely administrative in nature, as opposed to administrative proceedings that take on a quasi-judicial character. In administrative law, a quasi-judicial proceeding involves (a) taking and evaluating evidence; (b) determining facts based upon the evidence presented; and (c) rendering

an order or decision supported by the facts proved. The exercise of quasi-judicial functions involves a determination, with respect to the matter in controversy, of what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties.

6. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; QUASI-JUDICIAL POWER; AN ADMINISTRATIVE AGENCY IS NOT EXERCISING JUDICIAL FUNCTION WHEN IT IS NOT AUTHORIZED TO MAKE A FINAL PRONOUNCEMENT AFFECTING THE PARTIES.— The Court has laid down the test for determining whether an administrative body is exercising judicial or merely investigatory functions: adjudication signifies the exercise of the power and authority to adjudicate upon the rights and obligations of the parties. Hence, if the only purpose of an investigation is to evaluate the evidence submitted to an agency based on the facts and circumstances presented to it, and if the agency is not authorized to make a final pronouncement affecting the parties, then there is an absence of judicial discretion and judgment.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES ARE GENERALLY ACCORDED NOT ONLY GREAT RESPECT, BUT EVEN FINALITY.— [T]he findings of fact of administrative bodies will not be interfered with by the courts in the absence of grave abuse of discretion on the part of the former, or unless the aforementioned findings are not supported by substantial evidence. These factual findings carry even more weight when affirmed by the CA, in which case they are accorded not only great respect, but even finality. These findings are binding upon this Court, unless it is shown that the administrative body has arbitrarily disregarded or misapprehended evidence before the latter to such an extent as to compel a contrary conclusion, had the evidence been properly appreciated. This rule is rooted in the doctrine that this Court is not a trier of facts. By reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment on those matters.

8. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; DISMISSAL FROM THE SERVICE DOES NOT SUFFICE TO DISCREDIT A WITNESS.— We rule that the alleged dismissal of

respondents from the service would not suffice to discredit them as witnesses. In *People v. Dominguez,* this Court had occasion to rule that even a prior criminal conviction does not by itself suffice to discredit a witness; the testimony of that witness must be assayed and scrutinized in exactly the same way the testimonies of other witnesses must be examined for their relevance and credibility. In *Gomez v. Gomez-Samson*, this Court echoed its previous pronouncement that even convicted criminals are not excluded from testifying as long as, having organs of sense, they "can perceive and perceiving can make known their perceptions to others." This pronouncement is even more significant in this case, as what petitioner is alleging is not any past criminal conviction of respondents, but merely their dismissal from service. Scrutinizing the testimonies of respondents, we find, as did both the CSC and the CA, that these testimonies carry more weight than petitioner's self-serving statements and blanket denials.

9. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; A COMPLAINT FOR MALFEASANCE OR MISFEASANCE AGAINST A PUBLIC SERVANT CANNOT BE WITHDRAWN AT ANY TIME FOR WHATEVER REASON BY A COMPLAINANT.— Even assuming that an Affidavit of Desistance was indeed executed by respondents, petitioner is still not exonerated from liability. The subsequent reconciliation of the parties to an administrative proceeding does not strip the court of its jurisdiction to hear the administrative case until its resolution. Atonement, in administrative cases, merely obliterates the personal injury of the parties and does not extend to erase the offense that may have been committed against the public service. The subsequent desistance by respondents does not free petitioner from liability, as the purpose of an administrative proceeding is to protect the public service based on the time-honored principle that a public office is a public trust. A complaint for malfeasance or misfeasance against a public servant of whatever rank cannot be withdrawn at any time for whatever reason by a complainant, as a withdrawal would be "anathema to the preservation of the faith and confidence of the citizenry in their government, its agencies and instrumentalities." Administrative proceedings "should not be made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses therein."

10. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PETITIONER'S ACT OF DEMANDING MONEY FROM RESPONDENTS IN EXCHANGE FOR THEIR NON-REASSIGNMENT, A CASE OF.— [W]e rule that petitioner's act of demanding money from respondents in exchange for their non-reassignment constitutes grave misconduct. x x x [P]etitioner's acts likewise constitute conduct prejudicial to the best interest of the service. In *Philippine Retirement Authority v. Rupa* this Court elaborated on the specific acts that constitute the grave offense of conduct prejudicial to the best interest of the service, considering that no concrete description is provided under the Civil Service Law and rules. The Court outlined therein following acts: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to keep in safety public records and property, making false entries in public documents, and falsification of court orders. Applying this principle to the present case, we hold that petitioner's offense is of the same gravity or odiousness as that of the aforementioned acts and would likewise amount to conduct prejudicial to the best interest of the service.

11. ID.; ID.; ID.; ID.; PENALTY.— [G]rave misconduct is a grave offense punishable by dismissal even for the first offense. The penalty of dismissal includes forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in government service and bar from taking civil service examinations. On the other hand, conduct prejudicial to the best interest of the service is likewise a grave offense, but with a less severe penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense. Considering that petitioner was found guilty of two (2) offenses, then the penalty of dismissal from the service-the penalty corresponding to the most serious offense-was properly imposed.

APPEARANCES OF COUNSEL

Ferrer & Associates Law Office for petitioner.
Bayani P. Dalangin for respondents.

D E C I S I O N

SERENO, *C.J.*:

This is a Rule 45 Petition for Review on *Certiorari* assailing the Decision dated 20 November 2008[1] and Resolution dated 30 March 2009[2] issued by the Court of Appeals (CA). Affirming the findings of the Civil Service Commission (CSC), the CA found petitioner Carlito C. Encinas (petitioner) administratively liable for grave misconduct and conduct prejudicial to the best interest of service- offenses proscribed by Section 46(b)(4) and (27), Book V of Executive Order No. 292, respectively, or the Administrative Code of 1987 - and affirmed his dismissal.

The relevant facts are summarized as follows:

Respondents were then both holding positions as Fire Officer I in Nueva Ecija. They claim that on 11 March 2000, at around 9:00 p.m., petitioner – who was then Provincial Fire Marshall of Nueva Ecija – informed them that unless they gave him five thousand pesos (₱5,000), they would be relieved from their station at Cabanatuan City and transferred to far-flung areas. Respondent Alfredo P. Agustin (Agustin) would supposedly be transferred to the Cuyapo Fire Station (Cuyapo), and respondent Joel S. Caubang (Caubang) to Talugtug Fire Station (Talugtug). Fearing the reassignment, they decided to pay petitioner. On 15 March 2000, in the house of a certain "Myrna," respondents came up short and managed to give only two thousand pesos (₱2,000), prompting petitioner to direct them to come up with the balance within a week. When they failed to deliver the balance, petitioner issued instructions effectively reassigning respondents Agustin and Caubang to Cuyapo and Talugtug, respectively.[3]

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[1] *Rollo,* pp. 24-35. In the case entitled "*Carlito C. Encinas v. FO1 Alfredo P. Agustin and FO1 Joel S. Caubang*," docketed as CA-G.R. SP No. 104074 .

[2] *Id.* at 37.

[3] *Id.* at 39-40.

Based on the above-narrated circumstances, respondents filed with the Bureau of Fire Protection (BFP) a letter-complaint (BFP Complaint) on 27 March 2000 for illegal transfer of personnel under Republic Act (R.A.) No. 6975 or the Department of Interior and Local Government (DILG) Act of 1990.[4] The record is not clear as to why this Complaint was later docketed by the BFP for preliminary investigation for violation of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act.[5] The BFP Complaint provides in pertinent part:

> Chief Inspector Carlito C. Encinas relieved us from our present assignment and transferred us to different far places without any cause and due process of law based from the BFP Manual (Republic Act 6975)
>
> The reason why he relieved us was due to our failure to give the money he was asking from both of us in the amount of Five Thousand Pesos (₱5,000) in exchange for our present assignment to be retained. x x x.

On 12 April and 25 April 2000, on the basis of similar facts, respondents likewise filed with the CSC Regional Office in San Fernando, Pampanga (CSCRO), as well as with the CSC Field Office in Cabanatuan City,[6] their Joint Affidavit/Complaint (CSCRO Complaint).[7] This time, they accused petitioner of violation of Section 4(c) of R.A. No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. The relevant portion of the CSCRO Complaint provides:

> 6. That we executed this affidavit to file a complaint against C. Insp. Carlito C. Encinas BFP for violation of Section 4 (C) R.A. 6713, that is "Justness and sincerity. - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially

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4 CA *rollo*, pp. 79-81.

5 Resolution dated 05 July 2005; *Id.* at 82.

6 *Id.* at 28.

7 *Rollo*, pp. 38-40.

the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest."

The CSCRO Complaint erroneously pertained to the above-quoted provision as Section 4(c), but it should be denoted as Section 4(A)(c).

On 27 October 2000, after a fact-finding investigation was conducted in connection with his alleged extortion activities, petitioner was formally charged with dishonesty, grave misconduct, and conduct prejudicial to the best interest of service. He was required to file an answer within five (5) days from notice.[8] The Formal Charge specifically reads in part:

> WHEREFORE, Carlito C. Encinas is hereby formally charged with the offenses of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. Accordingly, he is given five (5) days from receipt hereof to submit to this Office a written answer under oath, together with the affidavits of his witnesses and documentary evidence, if any, and a statement whether or not he elects a formal investigation. He is advised of his right to the assistance of his counsel of his own choice.[9]

Although it was not specifically mentioned in the records, the offenses of dishonesty, grave misconduct, and conduct prejudicial to the best interest of service can be found in Section 46(b)(1), (4) and (27), Book V, respectively, of the Administrative Code of 1987.[10] The record does not indicate whether petitioner was formally charged with violation of R.A. No. 6713.

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[8] *Rollo*, pp. 41-42.

[9] *Id.* at 42.

[10] "Section 46. Discipline: General Provisions.— (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

(1) Dishonesty;

x x x x

BFP Complaint

In answer to the BFP Complaint against him, petitioner claimed that in an alleged Confidential Investigation Report dated 31 July 2000 (Confidential Report), no copy of which was attached to the record, [11] the investigating body recommended that charges against him be dropped for insufficiency of evidence. Instead, it recommended that respondents be charged with conducting unauthorized fire safety inspection and engaging in the sale of fire extinguishers, both in violation of the rules.

It appears on record that the Internal Audit Services (IAS) of the BFP issued a Resolution dated 05 July 2005,[12] recommending that the administrative complaint against petitioner be dismissed for insufficiency of evidence.[13] The IAS ruled that the reassignment of respondents was within the ambit of authority of the head of office. Thus, said reassignment may have been ordered as long as the exigencies of the service so required.[14] The Resolution dated 05 July 2005 states in pertinent part:

> The re-assignment of the complainants is within the ambit of authority, CSC Resolution No. 93402 dated 11 February 1993, the commission ruled as follows:
>
> *"That reassignment may be ordered by the head of office of the duly* authority [sic] *representative when the exigencies of the service so require but subject to the condition that there will be no reduction in rank, status or salary, further on Bongbong vs Paracaldo (57 SCRA 623) the supreme court ruled held* [sic] *that "on general*

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(4) Misconduct;

x x x x

(27) Conduct prejudicial to the best interest of the service; x x x"

[11] *Rollo*, p. 43, Petitioner referred to the Confidential Report in his *Answer* dated 11 December 2000, but a copy of this report was not attached to the *rollo* or CA *rollo*.

[12] CA *rollo*, pp. 82-84.

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

[14] *Id.* at 84.

principle petitioner may be transferred as to the exigencies of the service require". x x x

In view of the documents on record, the undersigned investigator finds no sufficient ground to warrant the filing of appropriate administrative offense against the respondent.

WHEREFORE, premises considered, this office (IAS) most respectfully recommends that the administrative complaint against **C/INSP CARLITO ENCINAS, BFP** be dismissed for insufficiency of evidence.

CSCRO Complaint

In his Answer to the formal charge of dishonesty, grave misconduct, and conduct prejudicial to the best interest of service,[15] petitioner claimed that the CSCRO Complaint was an offshoot of the reassignment of respondents. He alleged that they were reassigned after it was discovered that they had conducted a fire safety inspection of establishments within Nueva Ecija without any mission order. In relation to this operation, they supposedly sold fire extinguishers to the owners of the establishments they had inspected.[16] He cited the alleged Confidential Report in which the investigating body recommended the dropping of charges against him.[17] He further added that, in view of his exemplary and faithful service, the then- incumbent governor even requested the continuance of his stint as Provincial Fire Marshall of Nueva Ecija.[18] In his Position Paper,[19] petitioner claimed that respondents' transfer had been made in compliance with the directive of Supt. Simeon C. Tutaan (Supt. Tutaan) and pursuant to law.[20]

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

[16] *Id.* at 43.

[17] *Id.* at 43.

[18] *Id.* at 44.

[19] CA *rollo*, pp. 46-49.

[20] *Id.* at 49.

CSCRO Ruling

Subsequently, the CSCRO issued its Decision dated 30 July 2004,[21] finding petitioner administratively liable for grave misconduct and conduct prejudicial to the best interest of service, and ordered his dismissal from service.

The CSCRO ruled that respondents, through their respective testimonies, were able to establish the fact that petitioner demanded from them the amount of ₱5,000 in exchange for their non-reassignment to far-flung fire stations.[22] The fact that they did not present any document to show that petitioner received ₱2,000 did not preclude a finding of administrative liability.[23] The consistency of their oral testimonies already constituted substantial evidence. Granting that they committed illegal acts prior to their reassignment, this allegation nevertheless did not rebut their claims that petitioner had extorted money from them. The admission of Supt. Tutaan that he gave instructions for their reassignment did not disprove the accusation of extortion, but merely established that there was indeed an order to reassign them.[24]

Petitioner filed a Motion for Reconsideration.[25] He argued that the Sworn Statements of his witnesses should have been given weight instead of respondents' testimonies. He explained that Mrs. Angelina Calanoc (Mrs. Calanoc), owner of Reynand Gas Dealer, confirmed that respondents had conducted a physical inspection of her establishment, after which they recommended that she pay conveyance permit fees as a requisite for the issuance of a Fire Safety Certificate.[26] Also, Carlito Umali confirmed that he had indeed accompanied petitioner when the latter investigated the Complaint filed by Mrs. Calanoc against

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[21] *Id.* at 35-38.

[22] *Id.* at 37.

[23] *Id.*

[24] *Id.*

[25] *Rollo,* pp. 45-55.

[26] *Id.* at 48, 57.

respondents.[27] Furthermore, Myrna Villanueva – the owner of the house where respondents supposedly paid petitioner ₱2,000 – claimed that she did not know them personally or recall either petitioner or respondents ever visiting her house.[28] Likewise, Supt. Tutaan confirmed that he had instructed petitioner to cause the transfer of respondents.[29] The latter also argued that the BFP Complaint had already been dismissed by virtue of the Confidential Report, and that the dismissal had already served as a bar to the further prosecution of any administrative charge against him.[30]

The Motion, however, was subsequently denied by the CSCRO in its Order dated 19 May 2006.[31] It affirmed its previous ruling that the statements of petitioner's witnesses were incompetent and immaterial, having failed to disprove that petitioner had indeed extorted money from respondents.[32] It likewise rejected the argument of *res judicata* proffered by petitioner and ruled that the dismissal of the BFP Complaint by virtue of the Confidential Report was not a judgment on the merits rendered by a competent tribunal. Furthermore, the Confidential Report was the result of the recommendation of a fact-finding committee formed to determine the veracity of the Complaint charging petitioner with extortion, unjustified transfer of BFP personnel, and malversation of funds.[33] *Res judicata* cannot be raised as a defense, since the dismissal of the BFP Complaint did not constitute a bar by former judgment.[34]

Aggrieved, petitioner filed an Appeal Memorandum[35] with the CSC main office. In his Appeal, he argued that respondents

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[27] *Id.* at 47, 58-59.

[28] *Id.* at 47-48, 60.

[29] *Id.* at 48.

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

[31] Order dated 19 May 2006; CA *rollo*, pp. 33-34.

[32] *Id.* at 33.

[33] *Id.* at 34.

[34] *Id.*

[35] *Id.* at 64-78.

were guilty of forum-shopping for having filed two (2) separate administrative Complaints before the CSCRO on the one hand, and before the BFP/DILG on the other.[36] Petitioner argued that respondents failed to attach a certificate of non-forum shopping to either Complaint.[37] Moreover, the CSCRO should not have entertained the Complaint filed before it, considering that it already knew of the then-pending investigation conducted by the BFP/DILG.[38]

Petitioner further argued that the CSCRO only had appellate jurisdiction or authority to decide cases brought before it by the head of agency or, in this case, the BFP.[39] He explained that the administrative Complaint was investigated and heard by the BFP/DILG. The BFP department head or fire director, Rogelio F. Asignado, by virtue of the Resolution dated 05 July 2005, dismissed the complaint for insufficiency of evidence.[40] On the basis of the dismissal of the case, and there being no appeal or petition filed pertaining thereto, the CSCRO Complaint should have been dismissed as well.[41] Petitioner further argued that the CSCRO erred in concluding that the resolution of the fact-finding committee was not a judgment on the merits.[42] The BFP being an agency of the government, any decision or resolution it arrives at is also a judgment on the merits.[43]

Petitioner likewise reiterated his previous arguments on the appreciation of the testimonies of his witnesses.[44] He alleged that on 09 June 2006, respondent Agustin executed an Affidavit

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[36] *Id.* at 65.

[37] *Id.*

[38] *Id.* at 67.

[39] *Id.*

[40] *Id.* at 65.

[41] *Id.* at 68.

[42] *Id.* at 69.

[43] *Id.* at 70.

[44] *Id.* at 70-76.

of Desistance in the former's favor and was no longer interested in pursuing the case against him.[45]

In answer to the Appeal Memorandum, the CSCRO argued that there was no forum-shopping, considering that the BFP Complaint was based on a different cause of action.[46] The Complaint, which pertained to the alleged illegal transfer of personnel under R.A. No. 6975, was docketed for preliminary investigation of the alleged violation of the Anti-Graft and Corrupt Practices Act or R.A. No. 3019.[47] The CSCRO further argued that there could be no *res judicata*, since the dismissal of the BFP Complaint by virtue of the Resolution dated 05 July 2005[48] was not a judgment on the merits rendered by a competent tribunal. The dismissal was, instead, the result of the recommendation of the preliminary investigators of the Internal Audit Service (IAS) of the BFP.[49]

CSC Ruling

Petitioner's appeal was subsequently denied by CSC in its Resolution No. 080941 dated 19 May 2008 (CSC Resolution).[50] It ruled that there was no forum-shopping committed by respondents, and that substantial evidence existed to hold petitioner administratively liable for grave misconduct and conduct prejudicial to the best interest of the service.

The CSC explained that the CSCRO Complaint was for violation of R.A. No. 6713, while the BFP Complaint was for violation of R.A. No. 6975.[51] It further ruled that, although both Complaints were anchored on a similar set of facts, there

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[45] *Id.* at 76.

[46] *Id.* at 27.

[47] *Id.*

[48] *Rollo*, p. 27; CSC Resolution erroneously quoted the date as "July 5, 2006."

[49] *Id.* at 27.

[50] *Id.* at 25-32.

[51] *Id.* at 30.

was no identity of causes of action: thus, even if they were successively filed before different fora, no forum-shopping existed.[52] Although an investigation was then ongoing at the BFP when the CSCRO took cognizance of the case, no forum-shopping resulted. A perusal of the proceedings conducted at the BFP shows that only a preliminary investigation was initiated by the IAS-BFP, a fact-finding committee that recommended the dismissal of the case, which was accordingly approved by the fire director. The approval of this recommendation cannot be regarded as one based on merits. Otherwise, it would bar the filing of another case, particularly, with the CSCRO.[53]

With regard to petitioner's administrative liability, the CSC found that because of the nature of the case – extortion of money – hardly any documentary evidence could be gathered to prove the act complained of. As expected, the CSCRO based its findings on the written and oral testimonies of the parties and their witnesses, as well as on the circumstances surrounding the incident. Respondents clearly established that petitioner had demanded 5,000 in exchange for their reassignment.[54] The CSC further ruled that it was contrary to human nature for respondents, who were merely rank-and-file employees, to impute such a grave act to their boss. Their disparity in rank would show that respondents could not have fabricated their charges.[55] It further ruled that the withdrawal of the complaint would not result in their outright dismissal or absolve the person complained of from administrative liability.[56]

Aggrieved yet again, petitioner filed a Rule 43 Petition with the CA. His main argument was that the CSC erred in not dismissing respondents' Complaint despite the absence of a

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[52] *Id.*

[53] *Id.*

[54] *Id.* at 31.

[55] *Id.*

[56] *Id.* at 32.

certification of non-forum shopping and respondent's actual forum-shopping, as well as the lack of substantial evidence to hold him administratively liable.[57]

In his Rule 43 Petition, petitioner claimed that a certificate of non-forum shopping attached to a complaint is a mandatory requirement as stated in Section 8, Rule I of the Uniform Rules on Administrative Cases.[58] He argued that the causes of action in the two Complaints were similar. With regard to the proceedings before the CSC, aside from respondents' sole charge of violation of R.A. No. 6713, also included were charges of dishonesty, grave misconduct, and conduct prejudicial to the best interest of service. Petitioner reasoned that the additional offenses charged were equivalent to a violation of R.A. No. 6975, so the issues investigated were substantially the same.[59]

In relation to his administrative liability, petitioner argued that the testimonies of respondents should not be given weight, as their credibility had been rendered questionable by their dismissal from the service.[60] Also, they had already withdrawn their Complaints against him, as stated in their Affidavit of Desistance (Affidavit),[61] in which they admitted that the cases were filed out of a misapprehension of facts and a misunderstanding between the parties.[62]

Significantly, respondent Caubang denounced the supposed execution of the Affidavit. He claimed that he did not sign it, and that his purported signature therein was a forgery.[63]

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[57] *Id.* at 13.

[58] *Id.* at 14.

[59] *Id.* at 15.

[60] *Id.* at 18.

[61] *Id.* at 88.

[62] *Id.* at 19, 88.

[63] *Id.* at 95-98.

CA Ruling

Subsequently, the CA, in its assailed Decision,[64] denied petitioner's appeal. The CA ruled that it was not the letter-complaint filed by respondents that commenced the administrative proceedings against petitioner; instead, it was the formal charge filed by Atty. Marasigan-De Lima. The letter-complaint merely triggered the CSCRO's fact-finding investigation. Considering that the Complaint was initiated by the proper disciplining authority, it need not contain a certification of non-forum-shopping.[65]

The CA similarly ruled that respondents' act of simultaneously filing Complaints against petitioner both at the CSC and the BFP did not constitute forum-shopping. While it was conceded that the two Complaints were founded on the same set of facts involving the same parties, they were nonetheless based on different causes of action—more specifically, the BFP Complaint was for alleged violation of R.A. No. 3019, while the CSC Complaint was for violation of the provisions of R.A. No. 6713.[66] Furthermore, the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, not to the exercise of administrative powers.[67]

With regard to the administrative liability of petitioner, the CA found that substantial evidence supported the CSC's findings.[68] It likewise ruled that the testimonies of the witnesses of petitioner were incompetent and immaterial, as these could prove something else entirely, but did not disprove petitioner's extortion.[69] Also, the withdrawal of a complaint does not result in outright dismissal or discharge a person from any administrative liability.[70]

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64 *Rollo*, pp. 24-35.

65 *Id.* at 29.

66 *Id.* at 30.

67 *Id.*

68 *Id.* at 31.

69 *Id.* at 33.

70 *Id.*

Petitioner filed a Motion for Reconsideration,[71] but the CA denied it in its assailed Resolution dated 30 March 2009.[72]

Petitioner is now before this Court arguing the following: (1) the CA erred in affirming the CSC Resolution and in ruling that respondents were not guilty of forum-shopping; and (2) substantial evidence does not exist to hold petitioner administratively liable for grave misconduct and conduct prejudicial to the best interest of the service.

In their Comment, respondents counter that a certificate of non-forum shopping is not required if the one who files the formal charge is the head of agency.[73] They further argue that the case filed with the BFP was in the nature of violation under R.A. No. 3019, whereas the case filed before the CSC was in violation of R.A. No. 6713. A single act may result in two or more unlawful transgressions punishable under different laws.[74] As to the matter of administrative liability, the CSC's findings, especially when affirmed by the CA, are binding upon this Court.[75]

Issues

Based on the submissions of both parties, the following main issues are presented for resolution by this Court:

I. Whether or not respondents are guilty of forum-shopping.

II. Whether the CA erred in ruling that substantial evidence exists to hold petitioner administratively liable for grave misconduct and conduct prejudicial to the best interest of service.

The Court's Ruling

The Petition is devoid of merit. We rule that petitioner is administratively liable for grave misconduct and conduct

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[71] CA *rollo*, pp. 149-158.

[72] *Rollo*, p. 37.

[73] *Id.* at 75.

[74] *Id.*

[75] *Id.*

prejudicial to the best interest of the service under the Administrative Code of 1987; thus, we affirm his dismissal from service.

Discussion

I.

Respondents are not guilty of forum-shopping.

Petitioner argues that respondents are guilty of forum-shopping for filing two allegedly identical Complaints in violation of the rules on forum-shopping.[76] He explains that dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service—charges included in the CSCRO Complaint—were charges that were equivalent to the BFP Complaint, the subject of which was his alleged violation of R.A. 6975 or illegal transfer of personnel.[77]

We do not agree with petitioner. In *Yu v. Lim*,[78] this Court enumerated the requisites of forum-shopping as follows:

> Forum-shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) **identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case**.[79] (Emphasis supplied)

Applying the foregoing requisites to this case, we rule that the dismissal of the BFP Complaint does not constitute *res judicata* in relation to the CSCRO Complaint. Thus, there is no forum-shopping on the part of respondents.

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[76] *Id.* at 16.

[77] *Id.*

[78] G.R. No. 182291, 22 September 2010, 631 SCRA 172.

[79] *Id.*

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays down the rule that an existing final judgment or decree on the merits, rendered without fraud or collusion by a court of competent jurisdiction upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies in all other actions or suits, in the same or any other judicial tribunal of concurrent jurisdiction, on the points and matters in issue in the first suit.[80]

In order that *res judicata* may bar the institution of a subsequent action, the following requisites must concur: (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be between the first and the second actions (i) identity of parties, (ii) identity of subject matter, and (iii) identity of cause of action.[81]

A judgment may be considered as one rendered on the merits "when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections;"or when the judgment is rendered "after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point."[82]

In this case, there is no "judgment on the merits" in contemplation of the definition above. The dismissal of the BFP Complaint in the Resolution dated 05 July 2005 was the result of a fact-finding investigation for purposes of determining whether a formal charge for an administrative offense should be filed. Hence, no rights and liabilities of parties were determined therein with finality.

The CA was correct in ruling that the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, and not to

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[80] *Selga v. Brar*, G.R. No. 175151, 21 September 2011, 658 SCRA 108.

[81] *Chu v. Sps. Cunanan*, G.R. No. 156185, 12 September 2011, 657 SCRA 379.

[82] *Cabreza v. Cabreza*, G.R. No. 181962, 16 January 2012, 663 SCRA 29.

the exercise of administrative powers.[83] Administrative powers here refer to those purely administrative in nature,[84] as opposed to administrative proceedings that take on a quasi-judicial character.[85]

In administrative law, a quasi-judicial proceeding involves (a) taking and evaluating evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved.[86] The exercise of quasi-judicial functions involves a determination, with respect to the matter in controversy, of what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties.[87] In *Bedol v. Commission on Elections*,[88] this Court declared:

> Quasi-judicial or administrative adjudicatory power on the other hand is the power of the administrative agency to adjudicate the rights of persons before it. **It is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law.** The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or

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[83] *Heirs of Derla v. Heirs of Derla*, G.R. No. 157717, 13 April 2011, 648 SCRA 638.

[84] *Montemayor v. Bundalian*, 453 Phil. 158 (2003).

[85] See *United Pepsi-Cola Supervisory Union (UPSU) v. Laguesma*, 351 Phil. 244, 260 (1998), *Executive Judge Basilia v. Judge Becamon*, 487 Phil. 490 (2004); *Atty. De Vera v. Judge Layague*, 395 Phil. 253 (2000); *Salazar v. De Leon*, G.R. No. 127965, 20 January 2009; *National Housing Authority v. Pascual*, G.R. No. 158364, 28 November 2007, *DOLE Phils., Inc. v. Esteva*, G.R. No. 161115, 30 November 2006.

[86] *Secretary of Justice v. Lantion*, G.R. No. 139465, 18 January 2000, 379 Phil. 165 (2000).

[87] *Doran v. Executive Judge Luczon, Jr.*, G.R. No. 151344, 26 September 2006, 503 SCRA 106.

[88] G.R. No. 179830, 03 December 2009, 606 SCRA 554.

reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.

The Court has laid down the test for determining whether an administrative body is exercising judicial or merely investigatory functions: adjudication signifies the exercise of the power and authority to adjudicate upon the rights and obligations of the parties. Hence, if the only purpose of an investigation is to evaluate the evidence submitted to an agency based on the facts and circumstances presented to it, and if the agency is not authorized to make a final pronouncement affecting the parties, then there is an absence of judicial discretion and judgment.[89]

In this case, an analysis of the proceedings before the BFP yields the conclusion that they were purely administrative in nature and constituted a fact-finding investigation for purposes of determining whether a formal charge for an administrative offense should be filed against petitioner.

It can be gleaned from the Resolution dated 05 July 2005 itself that the purpose of the BFP proceedings was to determine whether there was sufficient ground to warrant the **filing of an appropriate administrative offense against petitioner**. To recall, the Resolution dated 05 July 2005 states:

The re-assignment of the complainants is within the ambit of authority, CSC Resolution No. 93402 dated 11 February 1993, the commission ruled as follows:

"That reassignment may be ordered by the head of office of the duly authority [sic] *representative when the exigencies of the service so require but subject to the condition that there will be no reduction in rank, status or salary, further on Bongbong vs Paracaldo (57 SCRA 623) the supreme court ruled held* [sic] *that "on general principle petitioner may be transferred as to the exigencies of the service require".* x x x

[89] *Secretary of Justice v. Lantion*, G.R. No. 139465, 18 January 2000, 379 Phil. 165 (2000), citing *Ruperto v. Torres* [100 Phil. 1098 (1957), unreported].

In view of the documents on record, the undersigned investigator finds no sufficient ground to warrant the filing of appropriate administrative offense against the respondent.

WHEREFORE, premises considered, this office (IAS) most respectfully recommends that the administrative complaint against C/INSP CARLITO ENCINAS, BFP be dismissed for insufficiency of evidence.[90] (Emphases supplied)

The proceedings before the BFP were merely investigative, aimed at determining the existence of facts for the purpose of deciding whether to proceed with an administrative action. This process can be likened to a public prosecutor's preliminary investigation, which entails a determination of whether there is probable cause to believe that the accused is guilty, and whether a crime has been committed.

The ruling of this Court in *Bautista v. Court of Appeals*[91] is analogously applicable to the case at bar. In that case, we ruled that the preliminary investigation conducted by a public prosecutor was merely inquisitorial and was definitely not a quasi-judicial proceeding:

A closer scrutiny will show that **preliminary investigation is very different from other quasi-judicial proceedings**. A quasi-judicial body has been defined as "an organ of government other than a court and other than a legislature which affects the rights of private parties through either adjudication or rule-making."

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On the other hand, the prosecutor in a preliminary investigation does not determine the guilt or innocence of the accused. **He does not exercise adjudication nor rule-making functions. Preliminary investigation is merely inquisitorial, and is often the only means of discovering the persons who may be reasonably charged with a crime and to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether**

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[90] CA *rollo*, p. 84.

[91] G.R. No. 143375, 6 July 2001, 413 Phil. 159 (2001).

there is probable cause to believe that the accused is guilty thereof. While the fiscal makes that determination, he cannot be said to be acting as a quasi-court, for it is the courts, ultimately, that pass judgment on the accused, not the fiscal. (Emphases supplied)

This principle is further highlighted in *MERALCO v. Atilano*,[92] in which this Court clearly reiterated that a public prosecutor, in conducting a preliminary investigation, is not exercising a quasi-judicial function. In a preliminary investigation, the public prosecutor inspects the records and premises, investigates the activities of persons or entities coming under the formers' jurisdiction, or secures or requires the disclosure of information by means of accounts, records, reports, statements, testimony of witnesses, and production of documents. In contrast, judicial adjudication signifies the exercise of power and authority to adjudicate upon the rights and obligations of concerned parties, *viz.*:

This is reiterated in our ruling in *Spouses Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City,* where we pointed out that a preliminary investigation is not a quasi-judicial proceeding, and the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause. A quasi-judicial agency performs adjudicatory functions when its awards determine the rights of parties, and its decisions have the same effect as a judgment of a court." [This] is not the case when a public prosecutor conducts a preliminary investigation to determine probable cause to file an information against a person charged with a criminal offense, or when the Secretary of Justice [reviews] the former's order[s] or resolutions" on determination of probable cause.

In Odchigue-Bondoc, we ruled that when the public prosecutor conducts preliminary investigation, he thereby exercises investigative or inquisitorial powers. **Investigative or inquisitorial powers include the powers of an administrative body to inspect the records and premises, and investigate the activities of persons or entities coming under his jurisdiction, or to secure, or to require the disclosure of information by means of accounts, records, reports, statements, testimony of witnesses, and production of documents. This power**

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[92] G.R. No. 166758, 27 June 2012, 675 SCRA 112.

is distinguished from judicial adjudication which signifies the exercise of power and authority to adjudicate upon the rights and obligations of concerned parties. Indeed, it is the exercise of investigatory powers which sets a public prosecutor apart from the court. (Emphasis supplied)

Indeed, the public prosecutor exercises investigative powers in the conduct of a preliminary investigation to determine whether, based on the evidence presented, further action should be taken through the filing of a criminal complaint in court. Similarly, in the instant case, the BFP exercised its investigative or fact-finding function to determine whether, based on the facts and the evidence presented, further administrative action—in the form of a formal charge—should be taken against petitioner. In neither instance is there in adjudication upon the rights, obligations, or liabilities of the parties before them.

With the above disquisition, we rule that the dismissal of the BFP Complaint cannot operate as *res judicata*. Therefore, the argument of forum-shopping is unavailing in this case.

II.

The CA was correct in ruling that there was substantial evidence to hold petitioner administratively liable for grave misconduct and conduct prejudicial to the best interest of the service.

On the substantive issue, petitioner claims that the findings are based on a misapprehension of facts. The dismissal of respondents from service allegedly placed their credibility in question.[93]

We do not agree. We find petitioner administratively liable for his act of demanding ₱5,000 from respondents in exchange for their non-reassignment.

At the outset, we stress the settled rule that the findings of fact of administrative bodies will not be interfered with by the courts in the absence of grave abuse of discretion on the part

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[93] *Rollo*, p. 18.

of the former, or unless the aforementioned findings are not supported by substantial evidence.[94] These factual findings carry even more weight when affirmed by the CA, in which case they are accorded not only great respect, but even finality. These findings are binding upon this Court, unless it is shown that the administrative body has arbitrarily disregarded or misapprehended evidence before the latter to such an extent as to compel a contrary conclusion, had the evidence been properly appreciated.[95] This rule is rooted in the doctrine that this Court is not a trier of facts.[96] By reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment on those matters.[97]

This Court will not disturb the factual findings of both the CSC and the CA, absent any compelling reason to do so. The conclusion reached by the administrative agencies involved – after their own thorough investigations and hearings, as well as their consideration of the evidence presented before them and their findings thereon, especially when affirmed by the CA – must now be regarded with great respect and finality by this Court.

We rule that the alleged dismissal of respondents from the service would not suffice to discredit them as witnesses. In *People v. Dominguez*,[98] this Court had occasion to rule that even a prior criminal conviction does not by itself suffice to discredit a witness; the testimony of that witness must be assayed and scrutinized in exactly the same way the testimonies of other witnesses must be examined for their relevance and credibility.[99]

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[94] *Catmon Sales International Corporation v. Yngson, Jr.*, G.R. No. 179761, 15 January 2010, 610 SCRA 236.

[95] *Id.*

[96] *Raniel v. Jochico*, G.R. No. 153413, 02 March 2007, 517 SCRA 221.

[97] *Sps. Ricardo, Jr. v. Cinco*, G.R. No. 174143, 28 November 2011, 661 SCRA 311.

[98] G.R. No. 100199, 18 January 1993, 217 SCRA 170.

[99] *Id.*

In *Gomez v. Gomez-Samson*,[100] this Court echoed its previous pronouncement that even convicted criminals are not excluded from testifying as long as, having organs of sense, they "can perceive and perceiving can make known their perceptions to others."[101]

This pronouncement is even more significant in this case, as what petitioner is alleging is not any past criminal conviction of respondents, but merely their dismissal from the service.[102] Scrutinizing the testimonies of respondents, we find, as did both the CSC and the CA, that these testimonies carry more weight than petitioner's self-serving statements and blanket denials.

Respondents, through their testimonies, were able to establish that petitioner told them that unless they paid him ₱5,000, they would be re-assigned to far-flung areas. The consistency of their testimonies was further bolstered by the fact that they had been cross-examined by petitioner's counsel. Petitioner was unable to rebut their claims other than by mere denials. Even the admission of Supt. Tutaan that he gave the instructions to reassign respondents cannot disprove the latter's claims. As regards the testimonies of the witnesses of petitioner, we hold that even these testimonies are irrelevant in disproving the alleged extortion he committed, as these were mainly related to respondents' supposed illegal activities, which are not the issue in this case.

Even assuming that an Affidavit of Desistance was indeed executed by respondents, petitioner is still not exonerated from liability. The subsequent reconciliation of the parties to an administrative proceeding does not strip the court of its jurisdiction to hear the administrative case until its resolution. Atonement, in administrative cases, merely obliterates the personal injury of the parties and does not extend to erase the offense that

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[100] G.R. No. 156284, 06 February 2007, 514 SCRA 475.

[101] *Id.* at 511.

[102] See *Gomez v. Gomez-Samson,* G.R. No. 156284, 06 February 2007, 514 SCRA 475.

may have been committed against the public service.[103] The subsequent desistance by respondents does not free petitioner from liability, as the purpose of an administrative proceeding is to protect the public service based on the time-honored principle that a public office is a public trust.[104] A complaint for malfeasance or misfeasance against a public servant of whatever rank cannot be withdrawn at any time for whatever reason by a complainant, as a withdrawal would be "anathema to the preservation of the faith and confidence of the citizenry in their government, its agencies and instrumentalities."[105] Administrative proceedings "should not be made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses therein."[106]

In view of the foregoing, we rule that petitioner's act of demanding money from respondents in exchange for their non-reassignment constitutes grave misconduct. We have defined grave misconduct as follows:

> Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer; and the misconduct is grave if it involves any of the additional elements of **corruption**, such as willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[107] (Emphasis supplied)

Furthermore, petitioner's acts likewise constitute conduct prejudicial to the best interest of the service. In *Philippine Retirement Authority v. Rupa*[108] this Court elaborated on the

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[103] *Flores v. Garcia*, A.M. No. MTJ-03-1499 & A.M. No. P-03-1752, 06 October 2008, 567 SCRA 342.

[104] See *Flores v. Garcia*, A.M. No. MTJ-03-1499 & A.M. No. P-03-1752, 06 October 2008, 567 SCRA 342.

[105] *Guro v. Doronio*, 444 Phil. 827 (2003) citing *Esmeralda-Baroy v. Peralta*, 350 Phil. 431 (1998).

[106] *Guro v. Doronio*, 444 Phil. 827 (2003) citing *Reyes-Domingo v. Morales*, 396 Phil. 150 (2000).

[107] *Re: Complaint of Mrs. Corazon S. Salvador against Spouses Noel and Amelia Serafico*, A.M. No. 2008-20-SC, 15 March 2010, 615 SCRA 186, 203-204.

[108] 415 Phil. 713 (2001).

specific acts that constitute the grave offense of conduct prejudicial to the best interest of the service, considering that no concrete description is provided under the Civil Service Law and rules. The Court outlined therein following acts: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to keep in safety public records and property, making false entries in public documents, and falsification of court orders.[109]

Applying this principle to the present case, we hold that petitioner's offense is of the same gravity or odiousness as that of the aforementioned acts and would likewise amount to conduct prejudicial to the best interest of the service.

As to the imposable penalty, grave misconduct is a grave offense punishable by dismissal even for the first offense.[110] The penalty of dismissal includes forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in government service and bar from taking civil service examinations.[111] On the other hand, conduct prejudicial to the best interest of the service is likewise a grave offense, but with a less severe penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal for the second offense.[112]

Considering that petitioner was found guilty of two (2) offenses, then the penalty of dismissal from the service—the penalty corresponding to the most serious offense—was properly imposed.[113]

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[109] *Id.*

[110] Uniform Rules on Administrative Cases in the Civil Service, Sec. 52(A) 3 [Sec. 4 (A)(3) of the Revised Rules on Administrative Cases in Civil Service dated 18 November 2011 (Revised Rules)]

[111] Uniform Rules on Administrative Cases in the Civil Service, Sec. 58 (Sec. 52 of the Revised Rules).

[112] Uniform Rules on Administrative Cases in the Civil Service, Sec. 52 (A) 20 [Sec. 46(B)(8) of the Revised Rules].

[113] "If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious

WHEREFORE, in view of the foregoing, this petition is hereby **DENIED**. The Decision dated 20 November 2008 and the Resolution dated 30 March 2009 issued by the CA in CA-G.R. SP No. 104074 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Leonen, JJ.*, concur.

Bersamin and *Perlas-Bernabe, JJ.*, no part.

EN BANC

[G.R. No. 203302. April 11, 2013]

MAYOR EMMANUEL L. MALIKSI, *petitioner, vs.* **COMMISSION ON ELECTIONS and HOMER T. SAQUILAYAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC RESOLUTION NO. 8804, AS AMENDED; RECOUNT PROCEEDINGS; SHALL BE CONDUCTED BY THE COMELEC DIVISIONS ONLY IN THE EXERCISE OF THEIR EXCLUSIVE ORIGINAL JURISDICTION OVER ALL ELECTION PROTESTS INVOLVING ELECTIVE REGIONAL, PROVINCIAL AND CITY OFFICIALS.— [T]he First Division should not have conducted the assailed recount proceedings because it was then exercising appellate jurisdiction as to which no existing rule of procedure allowed it to conduct a recount

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charge or count and the rest shall be considered as aggravating circumstances." [Uniform Rules on Administrative Cases in the Civil Service, Sec. 55 (Sec. 50 of the Revised Rules)].

in the first instance. The recount proceedings authorized under Section 6, Rule 15 of COMELEC Resolution No. 8804, as amended, are to be conducted by the COMELEC Divisions only in the exercise of their exclusive original jurisdiction over all election protests involving elective regional (the autonomous regions), provincial and city officials.

2. ID.; ID.; ID.; THE POWER OF THE COMELEC TO ADOPT PROCEDURES THAT WILL ENSURE THE SPEEDY RESOLUTION OF ITS CASES SHOULD BE EXERCISED ONLY AFTER GIVING ALL THE PARTIES THE OPPORTUNITY TO BE HEARD.— Based on the pronouncement in *Alliance of Barangay Concerns (ABC) v. Commission on Elections*, the power of the COMELEC to adopt procedures that will ensure the speedy resolution of its cases should still be exercised only after giving to all the parties the opportunity to be heard on their opposing claims. The parties' right to be heard upon adversarial issues and matters is never to be waived or sacrificed, or to be treated so lightly because of the possibility of the substantial prejudice to be thereby caused to the parties, or to any of them. Thus, the COMELEC *En Banc* should not have upheld the First Division's deviation from the regular procedure in the guise of speedily resolving the election protest, in view of its failure to provide the parties with notice of its proceedings and an opportunity to be heard, the most basic requirements of due process.

3. ID.; ID.; ID.; RULES ON REVISION OF BALLOTS; THE PICTURE IMAGES OF THE BALLOTS ARE TO BE USED ONLY WHEN IT IS FIRST SHOWN THAT THE OFFICIAL BALLOTS ARE LOST OR THEIR INTEGRITY HAS BEEN COMPROMISED.— The picture images of the ballots are electronic documents that are regarded as the equivalents of the original official ballots themselves. In *Vinzons-Chato v. House of Representatives Electoral Tribunal*, the Court held that "the picture images of the ballots, as scanned and recorded by the PCOS, are likewise 'official ballots' that faithfully capture in electronic form the votes cast by the voter, as defined by Section 2(3) of R.A. No. 9369. As such, the printouts thereof are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest." That the two documents—the official ballot and its picture image—are considered "original

documents" simply means that both of them are given equal probative weight. In short, when either is presented as evidence, one is not considered as weightier than the other. **But this juridical reality does not authorize the courts, the COMELEC, and the Electoral Tribunals to quickly and unilaterally resort to the printouts of the picture images of the ballots in the proceedings had before them without notice to the parties. Despite the equal probative weight accorded to the official ballots and the printouts of their picture images, the rules for the revision of ballots adopted for their respective proceedings still consider the official ballots to be the primary or best evidence of the voters' will. In that regard, the picture images of the ballots are to be used only when it is first shown that the official ballots are lost or their integrity has been compromised.**

4. ID.; ID.; ID.; ID.; THE DECRYPTION OF IMAGES AND THE PRINTING OF THE DECRYPTED IMAGES SHALL TAKE PLACE DURING THE REVISION OR RECOUNT PROCEEDINGS.— All the x x x rules on revision of ballots stipulate that the printing of the picture images of the ballots may be resorted to only after the proper Revision/Recount Committee has first determined that the integrity of the ballots and the ballot boxes was not preserved. The x x x rules further require that the decryption of the images stored in the CF cards and the printing of the decrypted images take place during the revision or recount proceedings. There is a good reason for thus fixing where and by whom the decryption and the printing should be conducted. It is during the revision or recount conducted by the Revision/Recount Committee when the parties are allowed to be represented, with their representatives witnessing the proceedings and timely raising their objections in the course of the proceedings. Moreover, whenever the Revision/Recount Committee makes any determination that the ballots have been tampered and have become unreliable, the parties are immediately made aware of such determination. When, as in the present case, it was not the Revision/Recount Committee or the RTC exercising original jurisdiction over the protest that made the finding that the ballots had been tampered, but the First Division in the exercise of its appellate jurisdiction, the parties should have been given a formal notice thereof.

5. ID.; ID.; ID.; COMELEC RESOLUTION NO. 8804, AS AMENDED; SECTION 3, RULE 16 THEREOF IS INAPPLICABLE IN CASE AT BAR.— The application of Section 3 [of Rule 16 of COMELEC Resolution No. 8804] to this case is inappropriate, considering that the First Division did not in any way suggest in its decision dated August 15, 2010 that it was resolving Saquilayan's motion to print the ballot images. Instead, the First Division made therein a finding of tampering x x x. Even the COMELEC *En Banc* did not indicate in its decision dated September 14, 2012 that the First Division merely resolved Saquilayan's motion for the printing of the ballot images; instead, it reinforced the First Division's finding that there was tampering of the ballots. The non-mention of Saquilayan's motion was a clear indication of the COMELEC's intention to act *motu proprio*; and also revealed its interpretation of its very own rules, that there must be justifiable reason, *i.e.* tampering, before the ballot images could be resorted to. The application of Section 3 would only highlight the First Division's denial of Maliksi's right to due process. For, if the First Division was really only acting on a motion to allow the printing of the ballot images, there was a greater reason for the First Division to have given the parties notice of its ruling thereon. But, as herein noted, the First Division did not issue such ruling. To interpret Section 3 as granting to any one of the parties the right to move for the printing of the ballot images should such party deem it necessary, and the COMELEC may grant such motion, is contrary to its clear wording. Section 3 explicitly states: "in case the parties deem it necessary, they may file a motion." The provision really envisions a situation in which both parties have *agreed* that the ballot images should be printed. Should only one of the parties move for the printing of the ballot images, it is not Section 3 that applies but Section 6(e), which then requires a finding that the integrity of the ballots has been compromised.

6. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS OF LAW; VIOLATED IN CASE AT BAR.— The disregard of Maliksi's right to be informed of the decision to print the picture images of the ballots and to conduct the recount proceedings during the appellate stage cannot be brushed aside by the invocation of the fact that Maliksi was able to file, after all, a motion for reconsideration. To be exact,

the motion for reconsideration was actually directed against the entire resolution of the First Division, while Maliksi's claim of due process violation is directed only against the First Division's recount proceedings that resulted in the prejudicial result rendered against him. Notably, the First Division did not issue any order directing the recount. Without the written order, Maliksi was deprived of the chance to seek any reconsideration or even to assail the irregularly-held recount through a seasonable petition for *certiorari* in this Court. In that context, he had no real opportunity to assail the conduct of the recount proceedings. The service of the First Division orders requiring Saquilayan to post and augment the cash deposits for the printing of the picture images did not sufficiently give Maliksi notice of the First Division's decision to print the picture images. The said orders did not meet the requirements of due process because they did not specifically inform Maliksi that the ballots had been found to be tampered. Nor did the orders offer the factual bases for the finding of tampering. Hence, to leave for Maliksi to surmise on the factual bases for finding the need to print the picture images still violated the principles of fair play, because the responsibility and the obligation to lay down the factual bases and to inform Maliksi as the party to be potentially prejudiced thereby firmly rested on the shoulders of the First Division. Moreover, due process of law does not only require notice of the decryption, printing, and recount proceedings to the parties, but also demands an opportunity to be present at such proceedings or to be represented therein. Maliksi correctly contends that the orders of the First Division simply required Saquilayan to post and augment his cash deposit. The orders did not state the time, date, and venue of the decryption and recount proceedings. Clearly, the First Division had no intention of giving the parties the opportunity to witness its proceedings.

7. ID.; ID.; ID.; ID.; NOTICE TO PARTIES IS REQUIRED WHERE THE PROCEEDINGS ARE ADVERSARIAL.— [T]he proceedings conducted by the First Division were adversarial, in that the proceedings included the decryption and printing of the picture images of the ballots and the recount of the votes were to be based on the printouts of the picture images. The First Division did not simply review the findings of the RTC and the Revision Committee, but actually conducted its own recount proceedings using the printouts of the picture

image of the ballots. As such, the First Division was bound to notify the parties to enable them to participate in the proceedings.

8. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC RESOLUTION NO. 8804, AS AMENDED; RECOUNT PROCEEDINGS; THE PARTIES' PRESENCE DURING THE PRINTING OF THE IMAGES OF THE BALLOTS IS REQUIRED.— Significantly, Section 6(l), Rule 15 of COMELEC Resolution No. 8804, as amended by COMELEC Resolution No. 9164, requires the parties' presence during the printing of the images of the ballots x x x. We should not ignore that the parties' participation during the revision and recount proceedings would not benefit only the parties, but was as vital and significant for the COMELEC as well, for only by their participation would the COMELEC's proceedings attain credibility as to the result. The parties' presence would have ensured that the requisite procedures have been followed, including the required authentication and certification that the images to be printed are genuine.

PEREZ, *J., concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; GUIDELINE NO. 5; OVER-VOTING; THE VOTE SHALL BE CONSIDERED STRAY AND WILL NOT BE CREDITED TO ANY OF THE CONTENDING PARTIES.— The electoral contest is all about over-voting. Simply, it means that in the contested ballots both the slots separately for petitioner Maliksi and respondent Saquilayan who vied for the position of Mayor of Imus, Cavite, were shaded. The guideline in the appreciation of ballots with overvoting is embodied in Guideline No. 5 used by the COMELEC. x x x There is a correlated guideline, Guideline No. 2, in the sense that both guidelines refer to instances of shading. However, as regards the covered matter and the consequence, the two rules are hugely different. Guideline No. 2 is about an entire ballot that is claimed to have been shaded by two or more persons x x x. [I]n case of a ballot claimed to have been shaded by two or more persons, there is an inquiry to determine whether or not the ballot was shaded by person/s,

other than the voter. The Guideline implies a presumption in favor of shading by the voter whose ballot should be rejected only if there is "any circumstance" showing shading by somebody else. On the contrary, in case of over-voting which is the case at hand, Guideline No. 5 outrightly provides the consequence that the vote shall be considered stray and will not be credited to any of the contending parties.

2. ID.; ID.; ID.; ID.; THE OVER-VOTING ITSELF CANNOT BE THE PROOF OF BALLOT TAMPERING.— The COMELEC disobeyed its own rule that over-voting results in a stray vote. Relying on "allegations of ballot and ballot box tampering," which allegations are without proof from the proponent, the COMELEC nonetheless favors the allegations through its own inspection of the ballot boxes to support its conclusion that "it is apparent that the integrity of the ballots had been compromised." That was done on the first review of the appealed decision. On second review, the COMELEC resorted to the observation of "unprecedented number of double-votes" which left it "with no other option but to dispense with the physical ballots and resort to their digital image." The grave abuse of discretion of the COMELEC is clear from its own words describing what it did in this case. It can be implied from its own decision on first review that the COMELEC agrees that before the physical ballots can be disregarded and the digital image favored, the tampering of the ballot box must be priorly proven. It had to allude to ballot box tampering because without the defect, the integrity of the ballots is unassailable. No proof of tampering came from the contestants in this case. The COMELEC relied on its observations. And it did not even detail the circumstances of the inspection it made and the facts that make tampering "apparent." Indeed, the over-voting itself cannot be the proof of ballot tampering. Even if we go by the Guideline on the claim of ballot shading by two or more persons, the presumption is that the ballot was shaded only by the voter, and this presumption prevails absent any circumstance showing that the ballot was shaded by persons other than the voter. Plainly, in the instant case, there is no circumstance independent of the fact of shading that such shading was done by someone other than the voter. Its odd reliance on the over-voting itself underscores the applicability

of the presumption that, in this case, the voter himself/herself did the shadings.

CARPIO, *J., dissenting opinion*:

1. REMEDIAL LAW; COURTS; SUPREME COURT; INTERNAL RULES OF THE SUPREME COURT; ALLOWS A MEMBER OF THE COURT TO LEAVE HIS VOTE IN WRITING.— Section 4, Rule 12 of the Internal Rules of the Supreme Court allows a member of this Court to leave his or her vote in writing. x x x As such, there was nothing irregular when Justice Perez left his vote in writing with the Chief Justice because he took part in the previous deliberation of the case.

2. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC RESOLUTION NO. 8804, AS AMENDED; PRINTING OF BALLOT IMAGES; PARTIES MAY MOVE FOR THE PRINTING OF THE BALLOT IMAGES EVEN WITHOUT SIGNS OF TAMPERING.— Section 6, Rule 15 should be read together with Rule 16 of Resolution No. 8804, as amended by Resolution No. 9164, particularly Section 3 x x x. **Section 3, Rule 16 does not require any allegation of tampering before the printing of ballot images may be requested by the parties. It does not require prior determination by the Revision/Recount Committee that the integrity of the ballots and the ballot boxes was not preserved. Under Section 3, Rule 16, the request may be made *when the parties deem the printing of the ballot images necessary.*** To repeat, the parties can request for the printing of the ballot images "in case the parties deem it necessary." This is a ground separate from that in Section 6(e), which refers to a determination of the integrity of the ballots by the Revision/Recount Committee. Section 3, Rule 16 provides that "[i]n case the parties deem it necessary, they may file a motion to be approved by the Division of the Commission requesting for the printing of ballot images **in addition to those mentioned in the second paragraph of item (e)**." The second paragraph of item (e) speaks of signs of tampering, or if the ballot box appears to have been compromised x x x. Section 3, Rule 16 allows an additional ground for the printing of the ballot images: the determination by the parties that the printing is necessary. Clearly, even without signs of tampering or that the integrity of the ballots and the ballot boxes had been

compromised, the parties may move for the printing of the ballot images. In this case, the COMELEC *En Banc* made it clear in its Comment that the COMELEC First Division ordered the decryption, printing and examination of the digital images because the COMELEC First Division "discovered upon inspection that the integrity of the ballots themselves was compromised and that the ballot boxes were tampered." **However, applying Section 3 of Rule 16, the finding of tampering was not even necessary for the COMELEC First Division to allow the printing of the ballot images.**

3. ID.; ID.; ID.; COMELEC RESOLUTION NO. 8808; MOTIONS; WHERE AN ADVERSE PARTY FAILS TO OPPOSE THE MOTION, HE IS DEEMED TO HAVE WAIVED HIS RIGHT TO OPPOSE IT.— When Maliksi did not oppose Saquilayan's motion for the printing of the ballot images, he is deemed to have waived his right to oppose the motion. The motion was deemed submitted for resolution. The COMELEC *En Banc* categorically stated that Maliksi "***never*** questioned the Order of decryption of the First Division nor did he raise any objection in any of the pleadings he filed with this Commission – a fact which already places him under estoppel." Maliksi could not claim that he was denied due process because he was not aware of the decryption proceedings. The Order dated 28 March 2012 where the COMELEC First Division directed Saquilayan to deposit the required amount for expenses for the supplies, honoraria, and fee for the decryption of the CF cards was personally delivered to Maliksi's counsel. The Order dated 17 April 2012 where the COMELEC First Division required Saquilayan to deposit an additional amount for expenses for the printing of additional ballot images from four clustered precincts was again personally delivered to Maliksi's counsel. Maliksi feigned ignorance of the decryption proceedings until he received the COMELEC First Division's Resolution of 15 August 2012.

4. ID.; ID.; ID.; COMELEC RESOLUTION NO. 8804, AS AMENDED; PRINTING OF BALLOT IMAGES; PARTIES OR THEIR REPRESENTATIVES ARE NOT REQUIRED TO BE PRESENT THEREIN.— As regards Maliksi's claim that he was deprived of his right to be present during the authentication process and the actual printing of the ballot images, Section 3 of

Resolution No. 8804, as amended by Resolution No. 9164, does not require the parties or their representatives to be present during the printing of the ballot images. Maliksi should have moved to be present at, or to observe, the decryption proceedings when he received the 28 March 2012 Order directing the decryption. Maliksi did not, and thus he waived whatever right he had to be present at, or to observe, the decryption proceedings.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; NOT DENIED WHERE THERE IS OPPORTUNITY TO BE HEARD, EITHER THROUGH ORAL ARGUMENTS OR PLEADINGS.— [T]here is no denial of due process where there is opportunity to be heard, either through oral arguments or pleadings. Further, the fact that a party was heard on his motion for reconsideration negates any violation of the right to due process. Maliksi's motion for reconsideration was directed against the entire resolution of the First Division, including the recount proceedings which he claimed to have violated his right to due process.

6. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS; GUIDELINE NO. 2; APPLIES IN CASES OF DOUBLE-SHADING; CASE AT BAR.— This case is not a case of over-voting under Guideline No. 5. In **overvoting** under Guideline No. 5, one person, that is, **the voter himself, votes for two or more persons for one elective position**. When the ballot is fed to the PCOS machine, the machine reads that two or more candidates for the same position had been shaded. The digital image will record two spaces shaded for one position. On the other hand, in **double-shading,** the voter shades the space for one candidate but another person, after the ballot is fed to the PCOS machine, surreptitiously shades another space for another candidate for the same position. In double-shading, the digital image shows only one shaded space for a candidate while the ballot shows two shaded spaces. In the present case, there was actually a double-shading (although it was inaccurately referred to as over-voting in the COMELEC First Division's Decision) which was done by person or persons other than the voter. When the ballot was fed to the PCOS machine, the machine read only one vote for one candidate for one position. After the double-shading, there were already

two votes for two candidates for the same position, but the digital image still contains only one shaded space. Here, the double-shading happened **after** the ballots were fed to and read by the PCOS machines because the digital images show only one shaded space while the ballots show two shaded spaces. **Double-shading is a post-election operation.** The double-shading covered 8,387 ballots, "exclusively affecting the position of Mayor and specifically affecting the ballots of Saquilayan" and the 8,387 affected ballots surprisingly all came from 53 clustered precincts "specifically pinpointed by Maliksi as his pilot precincts." The situation here is the one covered by Guideline No. 2 cited by Justice Perez which states that "[t]he best way to identify if a ballot has been tampered is to go to the digital image of the ballot as the PCOS was able to capture such when the ballot was fed by the voter into the machine when he cast his vote." This is what the COMELEC First Division did and the COMELEC First Division discovered that there was no double-shading in the digital images of the ballots. Obviously, the double-shading was done by persons other than the voters. x x x As such, the ballots should not be considered stray under Guideline No. 5.

APPEARANCES OF COUNSEL

Hernandez Custodio Law Offices for petitioner.
The Solicitor General for public respondent.
Charles Perfecto A. Mercado for private respondent.

R E S O L U T I O N

BERSAMIN, *J.*:

Court hereby resolves the Extremely Urgent Motion for Reconsideration filed by petitioner Emmanuel L. Maliksi against the Court's decision promulgated on March 12, 2013, dismissing his petition for *certiorari* assailing the resolution dated September 14, 2012 of the Commission on Elections (COMELEC) *En Banc* that sustained the declaration of respondent Homer T. Saquilayan as the duly elected Mayor of Imus, Cavite.

For clarity, we briefly restate the factual antecedents.

During the 2010 Elections, the Municipal Board of Canvassers proclaimed Saquilayan the winner for the position of Mayor of Imus, Cavite. Maliksi, the candidate who garnered the second highest number of votes, brought an election protest in the Regional Trial Court (RTC) in Imus, Cavite alleging that there were irregularities in the counting of votes in 209 clustered precincts. Subsequently, the RTC held a revision of the votes, and, based on the results of the revision, declared Maliksi as the duly elected Mayor of Imus commanding Saquilayan to cease and desist from performing the functions of said office. Saquilayan appealed to the COMELEC. In the meanwhile, the RTC granted Maliksi's motion for execution pending appeal, and Maliksi was then installed as Mayor.

In resolving the appeal, the COMELEC First Division, without giving notice to the parties, decided to recount the ballots through the use of the printouts of the ballot images from the CF cards. Thus, it issued an order dated March 28, 2012 requiring Saquilayan to deposit the amount necessary to defray the expenses for the decryption and printing of the ballot images. Later, it issued another order dated April 17, 2012 for Saquilayan to augment his cash deposit.

On August 15, 2012, the First Division issued a resolution nullifying the RTC's decision and declaring Saquilayan as the duly elected Mayor.[1]

Maliksi filed a motion for reconsideration, alleging that he had been denied his right to due process because he had not been notified of the decryption proceedings. He argued that the resort to the printouts of the ballot images, which were secondary evidence, had been unwarranted because there was no proof that the integrity of the paper ballots had not been preserved.

On September 14, 2012, the COMELEC *En Banc* resolved to deny Maliksi's motion for reconsideration.[2]

[1] *Rollo*, p. 125.

[2] *Id.* at 63.

Maliksi then came to the Court *via* petition for *certiorari*, reiterating his objections to the decryption, printing, and examination of the ballot images without prior notice to him, and to the use of the printouts of the ballot images in the recount proceedings conducted by the First Division.

In the decision promulgated on March 12, 2013, the Court, by a vote of 8-7, dismissed Maliksi's petition for *certiorari*. The Court concluded that Maliksi had not been denied due process because: (*a*) he had received notices of the decryption, printing, and examination of the ballot images by the First Division — referring to the orders of the First Division directing Saquilayan to post and augment the cash deposits for the decryption and printing of the ballot images; and (*b*) he had been able to raise his objections to the decryption in his motion for reconsideration. The Court then pronounced that the First Division did not abuse its discretion in deciding to use the ballot images instead of the paper ballots, explaining that the printouts of the ballot images were not secondary images, but considered original documents with the same evidentiary value as the official ballots under the Rule on Electronic Evidence; and that the First Division's finding that the ballots and the ballot boxes had been tampered had been fully established by the large number of cases of double-shading discovered during the revision.

In his Extremely Urgent Motion for Reconsideration, Maliksi raises the following arguments, to wit:

I.

WITH ALL DUE RESPECT, THIS HONORABLE SUPREME COURT *EN BANC* GRAVELY ERRED IN DISMISSING THE INSTANT PETITION DESPITE A CLEAR VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW CONSIDERING THAT DECRYPTION, PRINTING AND EXAMINATION OF THE DIGITAL IMAGES OF THE BALLOTS, WHICH IS THE BASIS FOR THE ASSAILED 14 SEPTEMBER 2012 RESOLUTION OF THE PUBLIC RESPONDENT, WHICH IN TURN AFFIRMED THE 15 AUGUST 2012 RESOLUTION OF THE COMELEC FIRST DIVISION, WERE DONE INCONSPICUOUSLY UPON A *MOTU PROPRIO* DIRECTIVE OF THE COMELEC FIRST DIVISION *SANS*

ANY NOTICE TO THE PETITIONER, AND FOR THE FIRST TIME ON APPEAL.

II.

WITH ALL DUE RESPECT, THIS HONORABLE SUPREME COURT *EN BANC* GRAVELY ERRED IN UPHOLDING THE COMELEC FIRST DIVISION'S RULING TO DISPENSE WITH THE PHYSICAL BALLOTS AND RESORT TO THEIR DIGITAL IMAGES NOTWITHSTANDING THE FACT THAT THE BALLOTS ARE THE BEST AND MOST CONCLUSIVE EVIDENCE OF THE VOTERS' WILL, AND THAT BALLOT IMAGES CAN BE RESORTED TO ONLY IF THE OFFICIAL BALLOTS ARE LOST OR THEIR INTEGRITY WAS COMPROMISED AS DETERMINED BY THE RECOUNT/REVISION COMMITTEE, CIRCUMSTANCES WHICH ARE WANTING IN THIS CASE, AND IN FACT THE INTEGRITY OF THE BALLOT BOXES AND ITS CONTENTS WAS PRESERVED AND THE ISSUE OF TAMPERING WAS ONLY BELATEDLY RAISED BY THE PRIVATE RESPONDENT AFTER THE REVISION RESULTS SHOWED THAT HE LOST.

III.

WITH ALL DUE RESPECT, IT IS THE HUMBLE SUBMISSION OF THE PETITIONER-MOVANT THAT THE 12 MARCH 2013 RESOLUTION ISSUED BY THE HONORABLE SUPREME COURT *EN BANC* IS NULL AND *VOID AB INITIO* AND THEREFORE OF NO FORCE AND EFFECT, FOR HAVING BEEN PROMULGATED DESPITE THE ABSENCE OF HONORABLE SUPREME COURT JUSTICE JOSE PORTUGAL PEREZ AT THE TIME OF THE DELIBERATION AND VOTING ON THE 12 MARCH 2013 *RESOLUTION* IN THE INSTANT CASE.[3]

Maliksi insists: (*a*) that he had the right to be notified of every incident of the proceedings and to be present at every stage thereof; (*b*) that he was deprived of such rights when he was not informed of the decryption, printing, and examination of the ballot images by the First Division; (*c*) that the March 28, 2012 and April 17, 2012 orders of the First Division did not sufficiently give him notice inasmuch as the orders did not state the date, time, and venue of the decryption and printing of the ballot images; and (*d*) that he was thus completely deprived of the opportunity to participate in the decryption proceedings.

[3] *Id.* at 575-577.

Maliksi contends that the First Division's *motu proprio* directive for the decryption, printing, and examination of the ballot images was highly irregular. In this regard, he asserts: (*a*) that the decryption, printing, and examination should have taken place during the revision before the trial court and after the revision committee had determined that the integrity of the official ballots had not been preserved; (*b*) that the trial court did not make such determination; (*c*) that, in fact, Saquilayan did not allege or present any proof in the RTC to show that the ballots or the ballot boxes had been tampered, and had, in fact, actively participated in the revision proceedings; (*d*) that the First Division should not have entertained the allegation of ballot tampering belatedly raised on appeal; (*e*) that the First Division should have limited itself to reviewing the evidence on record; and (*f*) that the First Division did not even explain how it had arrived at the conclusion that the integrity of the ballots had not been preserved.

Maliksi submits that the decision promulgated on March 12, 2013 is null and void for having been promulgated despite the absence from the deliberations and lack of signature of Justice Jose Portugal Perez.

Ruling

The Court grants Maliksi's Extremely Urgent Motion for Reconsideration, and reverses the decision promulgated on March 12, 2013 on the ground that the First Division of the COMELEC denied to him the right to due process by failing to give due notice on the decryption and printing of the ballot images. Consequently, the Court annuls the recount proceedings conducted by the First Division with the use of the printouts of the ballot images.

It bears stressing at the outset that the First Division should not have conducted the assailed recount proceedings because it was then exercising appellate jurisdiction as to which no existing rule of procedure allowed it to conduct a recount in the first instance. The recount proceedings authorized under Section 6, Rule 15 of COMELEC Resolution No. 8804, as amended, are to be conducted by the COMELEC Divisions only in the exercise

of their exclusive original jurisdiction over all election protests involving elective regional (the autonomous regions), provincial and city officials.[4]

As we see it, the First Division arbitrarily arrogated unto itself the conduct of the recount proceedings, contrary to the regular procedure of remanding the protest to the RTC and directing the reconstitution of the Revision Committee for the decryption and printing of the picture images and the revision of the ballots on the basis thereof. Quite unexpectedly, the COMELEC *En Banc* upheld the First Division's unwarranted deviation from the standard procedures by invoking the COMELEC's power to "take such measures as [the Presiding Commissioner] may deem proper," and even citing the Court's minute resolution in *Alliance of Barangay Concerns (ABC) Party-List v. Commission on Elections*[5] to the effect that the "COMELEC has the power to adopt procedures that will ensure the speedy resolution of its cases. The Court will not interfere with its exercise of this prerogative so long as the parties are amply heard on their opposing claims."

Based on the pronouncement in *Alliance of Barangay Concerns (ABC) v. Commission on Elections*, the power of the COMELEC to adopt procedures that will ensure the speedy resolution of its cases should still be exercised only after giving to all the parties the opportunity to be heard on their opposing claims. The parties' right to be heard upon adversarial issues and matters is never to be waived or sacrificed, or to be treated so lightly because of the possibility of the substantial prejudice to be thereby caused to the parties, or to any of them. Thus, the COMELEC *En Banc* should not have upheld the First Division's deviation from the regular procedure in the guise of speedily resolving the election protest, in view of its failure to provide the parties with notice of its proceedings and an opportunity to be heard, the most basic requirements of due process.

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[4] COMELEC Resolution No. 8804, Rule 6, Section 1.

[5] G.R. No. 199050, August 28, 2012.

I.
Due process requirements

The picture images of the ballots are electronic documents that are regarded as the equivalents of the original official ballots themselves.[6] In *Vinzons-Chato v. House of Representatives Electoral Tribunal*,[7] the Court held that "the picture images

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[6] 2010 Rules of Procedure for Municipal Election Contests, Rule 1, Section 3(r) defines "electronic document" as follows:

x x x x x x x x x

(r) Electronic document—refers to the record of information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally-signed documents and any printout or output, readable by sight or other means that accurately reflects the electronic document.

For purposes of these Rules, an electronic document refers to either the picture image of the ballots or the electronic copies of the electronic returns, the statements of votes, the certificates of canvass, the audit log, and other electronic data processed by the PCOS and consolidation machines.

x x x x x x x x x

Likewise, COMELEC Resolution No. 8804 (In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections), Rule 2, Section 1(q) defines "electronic document" as follows:

x x x x x x x x x

(q) Electronic document refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means which accurately reflects the electronic document.

For purposes of these Rules, electronic documents refer to either the picture image of the ballots and the electronic copies of the electronic returns, the statements of votes, the certificates of canvass, the audit log, and of the other electronic data relative to the processing done by the PCOS machines and the various consolidation machines.

x x x x x x x x x

[7] G.R. No. 199149, January 22, 2013.

of the ballots, as scanned and recorded by the PCOS, are likewise 'official ballots' that faithfully capture in electronic form the votes cast by the voter, as defined by Section 2(3) of R.A. No. 9369. As such, the printouts thereof are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest."

That the two documents—the official ballot and its picture image—are considered "original documents" simply means that both of them are given equal probative weight. In short, when either is presented as evidence, one is not considered as weightier than the other.

But this juridical reality does not authorize the courts, the COMELEC, and the Electoral Tribunals to quickly and unilaterally resort to the printouts of the picture images of the ballots in the proceedings had before them without notice to the parties. Despite the equal probative weight accorded to the official ballots and the printouts of their picture images, the rules for the revision of ballots adopted for their respective proceedings still consider the official ballots to be the primary or best evidence of the voters' will. In that regard, the picture images of the ballots are to be used only when it is first shown that the official ballots are lost or their integrity has been compromised.

For instance, the aforesaid Section 6, Rule 15 of COMELEC Resolution No. 8804 (*In Re: Comelec Rules of Procedure on Disputes In An Automated Election System in Connection with the May 10, 2010 Elections*), as amended by COMELEC Resolution No. 9164, itself requires that "the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that (the ballots) cannot be recounted" before the printing of the image of the ballots should be made, to wit:

x x x x x x x x x

(g) Only when the Recount Committee, through its chairman, determines that the integrity of the ballots has been preserved or

that no signs of tampering of the ballots are present, will the recount proceed. In case there are signs that the ballots contained therein are tampered, compromised, wet or are otherwise in such a condition that it could not be recounted, the Recount Committee shall follow paragraph (l) of this rule.

x x x x x x x x x

(l) In the event **the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are wet and otherwise in such a condition that it cannot be recounted**, the Chairman of the Committee shall request from the Election Records and Statistics Department (ERSD), the printing of the image of the ballots of the subject precinct stored in the CF card used in the May 10, 2010 elections **in the presence of the parties**. Printing of the ballot images shall proceed only **upon prior authentication and certification** by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and not substitutes. (Emphases supplied.)

x x x x x x x x x

Section 6, Rule 10 (Conduct of Revision) of the 2010 Rules of Procedure for Municipal Election Contests, which governs the proceedings in the Regional Trial Courts exercising original jurisdiction over election protests, provides:

x x x x x x x x x

(m) In the event that **the revision committee determines that the integrity of the ballots and the ballot box have not been preserved, as when proof of tampering or substitution exists**, it shall proceed to instruct the printing of the picture image of the ballots stored in the data storage device for the precinct. The court shall provide a non-partisan technical person who shall conduct the necessary **authentication process** to ensure that the data or image stored is genuine and not a substitute. Only after this determination can the printed picture image be used for the recount. (Emphases supplied.)

x x x x x x x x x

A similar procedure is found in the 2010 Rules of the Presidential Electoral Tribunal, to wit:

Rule 43. Conduct of the revision. – The revision of votes shall be done through the use of appropriate PCOS machines or manually and visually, as the Tribunal may determine, and according to the following procedures:

x x x x x x x x x

(q) In the event that **the RC determines that the integrity of the ballots and the ballot box was not preserved, as when there is proof of tampering or substitution**, it shall proceed to instruct the printing of the picture image of the ballots of the subject precinct stored in the data storage device for the same precinct. The Tribunal may avail itself of the assistance of the COMELEC for the service of a non-partisan technical person who shall conduct **the necessary authentication process** to ensure that the data or images stored are genuine and not merely substitutes. It is only upon such determination that the printed picture image can be used for the revision of votes. (Emphases supplied.)

x x x x x x x x x

Also, the House of Representative Electoral Tribunal's Guidelines on the Revision of Ballots requires a preliminary hearing to be held for the purpose of determining whether the integrity of the ballots and ballot boxes used in the May 10, 2010 elections was not preserved, as when there is proof of tampering or substitutions, to wit:

Section 10. Revision of Ballots

x x x x x x x x x

(d) When it has been shown, in a preliminary hearing set by the parties or by the Tribunal, that **the integrity of the ballots and ballot boxes used in the May 10, 2010 elections was not preserved, as when there is proof of tampering or substitutions**, the Tribunal shall direct the printing of the picture images of the ballots of the subject precinct stored in the data storage device for the same precinct. The Tribunal shall provide a non-partisan technical person who shall conduct **the necessary authentication** process to ensure that the data or image stored is genuine and not a substitute. It is only upon such determination that the printed picture image can be used for the revision. (As amended per Resolution of February 10, 2011; Emphases supplied.)

x x x x x x x x x

All the foregoing rules on revision of ballots stipulate that the printing of the picture images of the ballots may be resorted to only after the proper Revision/Recount Committee has first determined that the integrity of the ballots and the ballot boxes was not preserved.

The foregoing rules further require that the decryption of the images stored in the CF cards and the printing of the decrypted images take place during the revision or recount proceedings. There is a good reason for thus fixing where and by whom the decryption and the printing should be conducted. It is during the revision or recount conducted by the Revision/Recount Committee when the parties are allowed to be represented, with their representatives witnessing the proceedings and timely raising their objections in the course of the proceedings. Moreover, whenever the Revision/Recount Committee makes any determination that the ballots have been tampered and have become unreliable, the parties are immediately made aware of such determination.

When, as in the present case, it was not the Revision/Recount Committee or the RTC exercising original jurisdiction over the protest that made the finding that the ballots had been tampered, but the First Division in the exercise of its appellate jurisdiction, the parties should have been given a formal notice thereof.

Maliksi was not immediately made aware of that crucial finding because the First Division did not even issue any written resolution stating its reasons for ordering the printing of the picture images. The parties were formally notified that the First Division had found that the ballots had been tampered only when they received the resolution of August 15, 2012, whereby the First Division nullified the decision of the RTC and declared Saquilayan as the duly elected Mayor. Even so, the resolution of the First Division to that effect was unusually mute about the factual bases for the finding of ballot box tampering, and did not also particularize how and why the First Division was concluding that the integrity of the ballots had been compromised. All that the First Division declared as justification was a simple

generalization of the same being apparent from the allegations of ballot and ballot box tampering and upon inspection of the ballot boxes, *viz*:

x x x x x x x x x

The Commission (First Division) took into consideration the allegations of ballot and ballot box tampering and upon inspecting the ballot boxes, it is apparent that the integrity of the ballots had been compromised so, to be able to best determine the true will of the electorate, we decided to go over the digital image of the appealed ballots.[8] (Emphasis supplied)

x x x x x x x x x

It was the COMELEC *En Banc*'s assailed resolution of September 14, 2012 that later on provided the explanation to justify the First Division's resort to the picture images of the ballots, by observing that the "unprecedented number of double-votes" exclusively affecting the position of Mayor and the votes for Saquilayan had led to the belief that the ballots had been tampered. However, that explanation by the COMELEC *En Banc* did not cure the First Division's lapse and did not erase the irregularity that had already invalidated the First Division's proceedings.

In his dissenting opinion, Justice Antonio T. Carpio advances the view that the COMELEC's finding of ballot tampering was a mere surplusage because there was actually no need for such finding before the ballots' digital counterparts could be used. He cites Section 3, Rule 16 of COMELEC Resolution No. 8804, as amended by Resolution No. 9164, which states:

Section 3. Printing of Ballot Images. - In case the parties deem it necessary, they may file a motion to be approved by the Division of the Commission requesting for the printing of ballot images **in addition to those mentioned in the second paragraph of item (e)**. Parties concerned shall provide the necessary materials in the printing of images such as but not limited to copying papers, toners and printers. Parties may also secure, upon prior approval by the Division of the

[8] *Rollo,* p. 102.

Commission, a soft copy of the ballot images contained in a secured/ hashed disc on the condition that the ballot images be first printed, at the expense of the requesting party, and that the printed copies be signed by the parties' respective revisors or representatives and by an ERSD IT-capable representative and deposited with the Commission.

The Over-all chairman shall coordinate with the Director IV, Election Records and Statistics Department (ERSD), for the printing of images. Said director shall in turn designate a personnel who will be responsible in the printing of ballot images.

Justice Carpio posits that when a party files a motion for the printing of the ballots that he or she deems necessary, there is actually no need for a finding of tampering of the ballots or the ballot boxes before the COMELEC Division may grant the motion. He states that a determination by the parties that the printing is necessary under Section 3 is a ground separate from Section 6(e), which in turn pertinently states that:

Section 6. Conduct of the Recount –

x x x x x x x x x

(e) Before the opening of the ballot box, the Recount Committee shall note its condition as well as that of the locks or locking mechanism and record the condition in the recount report. From its observation, the Recount Committee must also make a determination as to whether the integrity of the ballot box has been preserved.

In the event that there are signs of tampering or if the ballot box appears to have been compromised, the Recount Committee shall still proceed to open the ballot box and make a physical inventory of the contents thereof. The committee shall, however, record its general observation of the ballots and other documents found in the ballot box.

The application of Section 3 to this case is inappropriate, considering that the First Division did not in any way suggest in its decision dated August 15, 2010 that it was resolving Saquilayan's motion to print the ballot images. Instead, the First Division made therein a finding of tampering, thus:

> The COMELEC (First Division) took into consideration the allegations of ballot and ballot box tampering and upon inspecting the ballot boxes, it is apparent that the integrity of the ballots had been compromised so, to be able to best determine the true will of the electorate, we decided to go over the digital images of the appealed ballots.

Even the COMELEC *En Banc* did not indicate in its decision dated September 14, 2012 that the First Division merely resolved Saquilayan's motion for the printing of the ballot images; instead, it reinforced the First Division's finding that there was tampering of the ballots. The non-mention of Saquilayan's motion was a clear indication of the COMELEC's intention to act *motu proprio*; and also revealed its interpretation of its very own rules, that there must be justifiable reason, *i.e.* tampering, before the ballot images could be resorted to.

The application of Section 3 would only highlight the First Division's denial of Maliksi's right to due process. For, if the First Division was really only acting on a motion to allow the printing of the ballot images, there was a greater reason for the First Division to have given the parties notice of its ruling thereon. But, as herein noted, the First Division did not issue such ruling.

To interpret Section 3 as granting to any one of the parties the right to move for the printing of the ballot images should such party deem it necessary, and the COMELEC may grant such motion, is contrary to its clear wording. Section 3 explicitly states: "in case the parties deem it necessary, they may file a motion." The provision really envisions a situation in which both parties have *agreed* that the ballot images should be printed. Should only one of the parties move for the printing of the ballot images, it is not Section 3 that applies but Section 6(e), which then requires a finding that the integrity of the ballots has been compromised.

The disregard of Maliksi's right to be informed of the decision to print the picture images of the ballots and to conduct the recount proceedings during the appellate stage cannot be brushed aside by the invocation of the fact that Maliksi was able to file,

after all, a motion for reconsideration. To be exact, the motion for reconsideration was actually directed against the entire resolution of the First Division, while Maliksi's claim of due process violation is directed only against the First Division's recount proceedings that resulted in the prejudicial result rendered against him. Notably, the First Division did not issue any order directing the recount. Without the written order, Maliksi was deprived of the chance to seek any reconsideration or even to assail the irregularly-held recount through a seasonable petition for *certiorari* in this Court. In that context, he had no real opportunity to assail the conduct of the recount proceedings.

The service of the First Division orders requiring Saquilayan to post and augment the cash deposits for the printing of the picture images did not sufficiently give Maliksi notice of the First Division's decision to print the picture images. The said orders did not meet the requirements of due process because they did not specifically inform Maliksi that the ballots had been found to be tampered. Nor did the orders offer the factual bases for the finding of tampering. Hence, to leave for Maliksi to surmise on the factual bases for finding the need to print the picture images still violated the principles of fair play, because the responsibility and the obligation to lay down the factual bases and to inform Maliksi as the party to be potentially prejudiced thereby firmly rested on the shoulders of the First Division.

Moreover, due process of law does not only require notice of the decryption, printing, and recount proceedings to the parties, but also demands an opportunity to be present at such proceedings or to be represented therein. Maliksi correctly contends that the orders of the First Division simply required Saquilayan to post and augment his cash deposit. The orders did not state the time, date, and venue of the decryption and recount proceedings. Clearly, the First Division had no intention of giving the parties the opportunity to witness its proceedings.

Mendoza v. Commission on Elections[9] instructs that notice to the parties and their participation are required during the

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[9] G. R. No. 188308, October 15, 2009, 603 SCRA 692.

adversarial aspects of the proceedings. In that case, after the revision of the ballots and after the election protest case was submitted for decision, the ballots and ballot boxes were transferred to the Senate Electoral Tribunal (SET) in connection with a protest case pending in the SET. Mendoza later learned that the COMELEC, with the permission of the SET, had meanwhile conducted proceedings within the SET's premises. Mendoza then claimed that his right to due process was violated because he had not been given notice by the COMELEC that it would be conducting further proceedings within the SET premises. The Court did not sustain his claim, however, and pointed out:

> After consideration of the respondents' Comments and the petitioner's petition and Reply, we hold that the contested proceedings at the SET ("contested proceedings[") are **no longer part of the adversarial aspects of the election contest that would require notice of hearing and the participation of the parties**. As the COMELEC stated in its Comment and without any contrary or disputing claim in the petitioner's Reply:
>
> > "However, contrary to the claim of petitioner, public respondent in the appreciation of the contested ballots in EPC No. 2007-44 simultaneously with the SET in SET Case No. 001-07 is not conducting "further proceedings" requiring notice to the parties. There is no revision or correction of the ballots because EPC No. 2007-04 was already submitted for resolution. Public respondent, in coordinating with the SET, is simply resolving the submitted protest case before it. The parties necessarily take no part in said deliberation, which require utmost secrecy. Needless to state, the actual decision-making process is supposed to be conducted only by the designated members of the Second Division of the public respondent in strict confidentiality."
>
> In other words, what took place at the SET were the internal deliberations of the COMELEC, as a quasi-judicial body, in the course of appreciating the evidence presented and deciding the provincial election contest on the merits. These deliberations are no different from judicial deliberations which are considered confidential and privileged. We find it significant that the private respondent's Comment fully supported the COMELEC's position and disavowed

any participation in the contested proceeding the petitioner complained about. The petitioner, on the other hand, has not shown that the private respondent was ever present in any proceeding at the SET relating to the provincial election contest.

To conclude, the rights to notice and to be heard are not material considerations in the COMELEC's handling of the Bulacan provincial election contest after the transfer of the ballot boxes to the SET; no proceedings at the instance of one party or of COMELEC has been conducted at the SET that would require notice and hearing because of the possibility of prejudice to the other party. The COMELEC is under no legal obligation to notify either party of the steps it is taking in the course of deliberating on the merits of the provincial election contest. In the context of our standard of review for the petition, we see no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COMELEC in its deliberation on the Bulacan election contest and the appreciation of ballots this deliberation entailed.[10] (Emphasis supplied.)

Here, the First Division denominated the proceedings it had conducted as an "appreciation of ballots" like in *Mendoza*. But unlike in *Mendoza*, the proceedings conducted by the First Division were adversarial, in that the proceedings included the decryption and printing of the picture images of the ballots and the recount of the votes were to be based on the printouts of the picture images. The First Division did not simply review the findings of the RTC and the Revision Committee, but actually conducted its own recount proceedings using the printouts of the picture image of the ballots. As such, the First Division was bound to notify the parties to enable them to participate in the proceedings.

Significantly, Section 6(l), Rule 15 of COMELEC Resolution No, 8804, as amended by COMELEC Resolution No. 9164, requires the parties' presence during the printing of the images of the ballots, thus:

xxx x x x xxx

(l) In the event the Recount Committee determines that the integrity of the ballots has been violated or has not been preserved, or are

[10] *Id.* at 716-717.

wet and otherwise in such a condition that it cannot be recounted, the Chairman of the Committee shall request from the Election Records and Statistics Department (ERSD), the printing of the image of the ballots of the subject precinct stored in the CF card used in the May 10, 2010 elections **in the presence of the parties**. Printing of the ballot images shall proceed only upon prior authentication and certification by a duly authorized personnel of the Election Records and Statistics Department (ERSD) that the data or the images to be printed are genuine and not substitutes.

x x x x x x x x x

We should not ignore that the parties' participation during the revision and recount proceedings would not benefit only the parties, but was as vital and significant for the COMELEC as well, for only by their participation would the COMELEC's proceedings attain credibility as to the result. The parties' presence would have ensured that the requisite procedures have been followed, including the required authentication and certification that the images to be printed are genuine. In this regard, the COMELEC was less than candid, and was even cavalier in its conduct of the decryption and printing of the picture images of the ballots and the recount proceedings. The COMELEC was merely content with listing the guidelines that the First Division had followed in the appreciation of the ballots and the results of the recount. In short, there was vagueness as to what rule had been followed in the decryption and printing proceeding.

II.
Remand to the COMELEC

We are mindful of the urgent need to speedily resolve the election protest because the term of the position involved is about to end. Thus, we overlook *pro hac vice* the lack of factual basis for the COMELEC's decision to use the digital images of the ballots and sustain its decision thereon. Although a remand of the election protest to the RTC would have been the appropriate procedure, we direct the COMELEC *En Banc* instead to conduct the decryption and printing of the digital images of the ballots and to hold recount proceedings, with

due notice to all the parties and opportunity for them to be present and to participate during such proceedings. Nothing less serves the ideal objective safeguarded by the Constitution.

In the absence of particular rules to govern its proceedings in accordance with this disposition, the COMELEC is urged to follow and observe Rule 15 of COMELEC Resolution No. 8804, as amended by COMELEC Resolution No. 9164.

The Court, by this resolution, does not intend to validate the victory of any of the parties in the 2010 Elections. That is not the concern of the Court as yet. The Court simply does not want to countenance a denial of the fundamental right to due process, a cornerstone of our legal system.[11] After all, it is the Court's primary duty to protect the basic rights of the people *vis-à-vis* government actions, thus:

> It cannot be denied that most government actions are inspired with noble intentions, all geared towards the betterment of the nation and its people. But then again, it is important to remember this ethical principle: "The end does not justify the means." No matter how noble and worthy of admiration the purpose of an act, but if the means to be employed in accomplishing it is simply irreconcilable with constitutional parameters, then it cannot still be allowed. The Court cannot just turn a blind eye and simply let it pass. It will continue to uphold the Constitution and its enshrined principles.[12]

WHEREFORE, the Court **PARTIALLY GRANTS** the Extremely Urgent Motion for Reconsideration of petitioner Emmanuel Maliksi; **REVERSES** the Court's decision promulgated on March 12, 2013; and **DIRECTS** the Commission on Elections *En Banc* to conduct proceedings for the decryption of the picture images of the ballots involved in the protest after due authentication, and for the recount of ballots by using the printouts of the ballot images, with notice to and in the presence of the parties or their representatives in accordance with the

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[11] *Pinlac v. Court of Appeals,* G.R. No. 91486, January 19, 2001, 349 SCRA 635, 653.

[12] *Biraogo v. Philippine Truth Commission of 2010,* G.R. No. 192935, December 7, 2010, 637 SCRA 78, 177.

procedure laid down by Rule 15 of COMELEC Resolution No. 8804, as amended by Resolution No. 9164.

No pronouncement on costs of suit.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Villarama, Jr., Mendoza, and *Reyes, JJ.,* concur.

Perez, J., concurs in a separate opinion.

Sereno, C.J., del Castillo, Abad, Perlas-Bernabe, and *Leonen, JJ.,* join the dissent of *J.* Carpio.

Carpio, J., see dissenting opinion.

CONCURRING OPINION

PEREZ, *J.*:

The issue as basic as due process of law and the opinion of as many as seven of us who saw that petitioner was deprived of the fundamental right highlights my duty to join the discussion. With the present motion for reconsideration providing the opportunity to look into the reasons that divided the Court, I do so.

1. The electoral contest is all about over-voting. Simply, it means that in the contested ballots both the slots separately for petitioner Maliksi and respondent Saquilayan who vied for the position of Mayor of Imus, Cavite, were shaded. The guideline in the appreciation of ballots with over voting is embodied in Guideline No. 5 used by the COMELEC. Thus:

> 5. On over-voting. It has been the position of the Commission that over-voting in a certain position will make the vote cast for that position STRAY but will not invalidate the entire ballot, so IN CASE OF OVER VOTING FOR THE CONTESTED POSITION, SUCH VOTE SHALL BE CONSIDERED STRAY AND WILL NOT BE CREDITED TO ANY OF THE CONTENDING PARTIES. (Emphasis supplied)

There is a correlated guideline, Guideline No. 2, in the sense that both guidelines refer to instances of shading. However, as regards the covered matter and the consequence, the two rules are hugely different. Guideline No. 2 is about an entire ballot that is claimed to have been shaded by two or more persons, and it states:

> 2. On ballots claimed to have been shaded by two or more persons. - Unlike in manual elections where it is easy to identify if a ballot has been written by two persons, in case of an automated election, it would be very hard if not impossible to identify if two persons shaded a single ballot. The best way to identify if a ballot has been tampered is to go to the digital image of the ballot as the PCOS machine was able to capture such when the ballot was fed by the voter into the machine when he cast his vote. In the absence of any circumstance showing that the ballot was shaded by persons other than the voter, the ballots should not be rejected to give effect to the voter's intent.

Clearly, in case of a ballot claimed to have been shaded by two or more persons, there is an inquiry to determine whether or not the ballot was shaded by person/s, other than the voter. The Guideline implies a presumption in favor of shading by the voter whose ballot should be rejected only if there is "any circumstance" showing shading by somebody else.

On the contrary, in case of over-voting which is the case at hand, Guideline No. 5 outrightly provides the consequence that the vote shall be considered stray and will not be credited to any of the contending parties.

The reason behind the significant variance in the consequences of the two kinds of shading can be debated endlessly. The obviousness of the difference outlined by the COMELEC, which is the sole judge of an election contest, forecloses such a debate. What the obviousness brings about, as it is my intention, is the grave abuse of discretion on the part of the COMELEC.

The COMELEC disobeyed its own rule that over-voting results in a stray vote. Relying on "allegations of ballot and ballot box tampering," which allegations are without proof from the

proponent, the COMELEC nonetheless favors the allegations through its own inspection of the ballot boxes to support its conclusion that "it is apparent that the integrity of the ballots had been compromised." That was done on the first review of the appealed decision. On second review, the COMELEC resorted to the observation of "unprecedented number of double-votes" which left it "with no other option but to dispense with the physical ballots and resort to their digital image."

The grave abuse of discretion of the COMELEC is clear from its own words describing what it did in this case.

It can be implied from its own decision on first review that the COMELEC agrees that before the physical ballots can be disregarded and the digital image favored, the tampering of the ballot box must be priorly proven. It had to allude to ballot box tampering because without the defect, the integrity of the ballots is unassailable. No proof of tampering came from the contestants in this case. The COMELEC relied on its observations. And it did not even detail the circumstances of the inspection it made and the facts that make tampering "apparent."

Indeed, the over-voting itself cannot be the proof of ballot tampering. Even if we go by the Guideline on the claim of ballot shading by two or more persons, the presumption is that the ballot was shaded only by the voter, and this presumption prevails absent any circumstance showing that the ballot was shaded by persons other than the voter. Plainly, in the instant case, there is no circumstance independent of the fact of shading that such shading was done by someone other than the voter. Its odd reliance on the over-voting itself underscores the applicability of the presumption that, in this case, the voter himself/herself did the shadings.

The fact is that petitioner has in his Election Protest, come forward with an explanation about over-voting. Thus:

4.A.6. In Official Sample Ballot with Voters lnformation Sheet (VIS) issued by the Commission on Elections, the number four

candidate for Mayor of lmus, Cavite is Emmanuel L. Maliksi which appears on the first row, third column in the said COMELEC official sample ballot, x x x. However, in the Official Ballot, the name of Emmanuel L. Maliksi appears on the second row, second column as number four candidate and the name of the fifth candidate Homer T. Saquilayan was moved from the first row fourth column to first row third column where the name of Emmanuel L. Maliksi was originally located on the sample ballot, x x x. This evidently resulted in the confusion and mistake in the shading of the proper space for mayoralty candidate Emmanuel L. Maliksi.

This proposition was evidently found tenable by the trial court which, upon the opening of the ballot boxes and ballots, applied the guideline that the over-votes are stray votes. That proposition based on facts reached the COMELEC via appeal. It should have at least merited a discussion.

2. I concur with the *ponencia* of Justice Bersamin. I discussed the lack of factual and legal premise for the decryption done by the COMELEC to punctuate its grave abuse of discretion that even went further and similarly characterized the process of decryption itself.

I thus join Justice Bersamin in the remand of this case to the COMELEC for immediate cleansing of the process, which after all, kindred to the purpose of Justice Bersamin, is the object of my participation in the resolution of this contest, not the pleasure of anyone of the contestants.

DISSENTING OPINION

CARPIO, *J.*:

For the Court's consideration is the Extremely Urgent Motion for Reconsideration filed by Emmanuel L. Maliksi (Maliksi) assailing this Court's 12 March 2013 Decision which affirmed the l 4 September 2012 Resolution of the Commission on Elections (COMELEC) *En Banc* and declared Homer T. Saquilayan (Saquilayan) as the duly-elected Municipal Mayor of Imus, Cavite.

In his motion for reconsideration, Maliksi cited extensively from the Dissenting Opinion[1] and asserted that he was denied due process when the COMELEC First Division decrypted, printed, and examined the ballot images without notice to him. Maliksi further alleged that this Court's 12 March 2013 Decision is null and void for having been promulgated in the absence of Associate Justice Jose Portugal Perez (Justice Perez).

First, I wi1l discuss the issue of the absence of Justice Perez when the Court's 12 March 2013 Decision was promulgated.

Section 4, Rule 12 of the Internal Rules of the Supreme Court allows a member of this Court to leave his or her vote in writing. The Rule states:

> SEC. 4. *Leaving a vote.* — A Member who goes on leave or is unable to attend the voting on any decision, resolution, or matter may leave his or her vote in writing, addressed to the Chief Justice or the Division Chairperson, and the vote shall be counted, provided that he or she took part in the deliberation.

As such, there was nothing irregular when Justice Perez left his vote in writing with the Chief Justice because he took part in the previous deliberation of the case.

Maliksi again assails the decryption and printing of the ballot images for the first time on appeal.

I reiterate that Saquilayan first requested for the printing of the ballot images before the trial court when he filed a Motion To Print Picture Images Of The Ballot Boxes Stored In The Memory Cards Of The Clustered Precincts[2] dated 21 March 2011. In that Motion, Saquilayan made the allegation of tampering citing that during the preliminary revision proceedings, he noticed an unusually large number of double-voted ballots only for the position of Mayor and that the recorded counts of all the revision committees show significant discrepancies between the ballot counts and the results reflected in the election returns.[3] It was

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[1] Penned by Associate Justice Lucas P. Bersamin.

[2] *Rollo*, pp. 283-285.

[3] *Id.* at 283.

only on 3 May 2011 that the trial court in an Omnibus Order granted Saquilayan's motion for the printing of the ballot images in the CF cards.[4] On 16 May 2011, the COMELEC Election Records and Statistics Department (ERSD) informed Saquilayan that the CF cards were still in the custody of the trial court. In a Manifestation and Request [5] dated 20 May 2011, Saquilayan asked the trial court to forward the CF cards of the protested precincts to the ERSD to enable the COMELEC to decrypt and print the ballot images. The decryption of the ballot images was set on 21 June 2011.

Maliksi then filed a Motion for Honorable Court to Request ERSD to Specify Procedure to Decrypt Compact Flash (CF) Cards. The trial court, in an Order[6] dated 17 June 2011, requested the ERSD to specify the procedure that it would undertake during the proceedings and set the case for conference on 27 June 2011. In a letter[7] dated 20 June 2011, Maliksi wrote the ERSD requesting that further proceedings be deferred and held in abeyance in deference to the 17 June 2011 Order of the trial court. On 27 June 2011, on the date the case was set for conference, Maliksi filed a Motion to Consider That Period Has Lapsed to Print Ballot's Picture Images[8] on the ground that Saquilayan only had 30 days from receipt of the Omnibus Order dated 3 May 2011 to accomplish the printing of the ballot images. Maliksi alleged that the 30-day period started on l 0 May 2011 when Saquilayan received the 3 May 2011 Omnibus Order and ended on 22 June 2011. Thus, Saquilayan was already barred from having access to the electronic data in the COMELEC's back-up server and to print the ballot images in the CF cards. The trial court granted Maliksi's motion in its Order dated 3 August 2011[9] despite the fact that the delay in

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[4] *Id.* at 293-295.

[5] *Id.* at 298-300.

[6] *Id.* at 302-303.

[7] *Id.* at 304.

[8] *Id.* at 307-309.

[9] *Id.* at 359, Omnibus Order dated 1 September 2011.

the decryption could not be attributed to Saquilayan's fault alone but also due to the failure of the trial court to turn over the CF cards to the ERSD and to Maliksi's motion for the ERSD to specify the procedure in decrypting the CF cards. Clearly, the issue of tampering, as well as the request for the decryption of the ballot images, was not raised for the first time on appeal.

Maliksi also echoed the Dissenting Opinion that the printing of the ballot images may only be resorted to after the proper Revision/Recount Committee had first determined that the integrity of the ballots and the ballot boxes was not preserved. Citing Section 6, Rule 15 of COMELEC Resolution No. 8804,[10] as amended by Resolution No. 9164,[11] Maliksi alleged that the decryption of the images stored in the CF cards and the printing of the decrypted images must take place during the revision or recount proceedings and that it should be the Revision/Recount Committee that determines whether the ballots are unreliable.

Section 6, Rule 15 should be read together with Rule 16 of Resolution No. 8804, as amended by Resolution No. 9164, particularly Section 3, which provides:

Section 3. Printing of Ballot Images. - **In case the parties deem it necessary,** they may file a motion to be approved by the Division of the Commission requesting for the printing of ballot images **in addition to those mentioned in the second paragraph of item (e).** Parties concerned shall provide the necessary materials in the printing of images such as but not limited to copying papers, toners and printers. Parties may also secure, upon prior approval by the Division of the Commission, a soft copy of the ballot images contained in a secured/hashed disc on the condition that the ballot images be first printed, at the expense of the requesting party, and that the printed copies be signed by the parties' respective revisors or representatives and by an ERSD IT-capable representative and deposited with the Commission.

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[10] In Re: Comelec Rules of Procedure on Disputes in An Automated Election System in Connection with the May 10, 2010 Elections.

[11] In the Matter of Reinstating and Reimplementing Comelec Resolution No. 8804 with Amendments.

The Over-all chainnan shall coordinate with the Director IV, Election Records and Statistics Department (ERSD), for the printing or images. Said director shall in turn designate a personnel who will be responsible in the printing of ballot images. (Emphasis supplied)

Section 3, Rule 16 does not require any allegation of tampering before the printing of ballot images may be requested by the parties. It does not require prior determination by the Revision/Recount Committee that the integrity of the ballots and the ballot boxes was not preserved. Under Section 3, Rule 16, the request may be made *when the parties deem the printing of the ballot images necessary.*

To repeat, the parties can request for the printing of the ballot images "in case the parties deem it necessary." This is a ground separate from that in Section 6(e), which refers to a determination of the integrity of the ballots by the Revision/ Recount Committee. Section 3, Rule 16 provides that "[i]n case the parties deem it necessary, they may file a motion to be approved by the Division of the Commission requesting for the printing of ballot images **in addition to those mentioned in the second paragraph of item (e)**." The second paragraph of item (e) speaks of signs of tampering, or if the ballot box appears to have been compromised, thus:

Section 6. Conduct of the Recount - x x x.

x x x x x x x x x

(e) Before· the opening of the ballot box, the Recount Committee shall note its condition as well as that of the locks or locking mechanism and record the condition in the recount report. **From its observation, the Recount Committee must also make a determination as to whether the integrity of the ballot box has been preserved.**

In the event that there are signs of tampering or if the ballot box appears to have been compromised, the Recount Committee shall still proceed to open the ballot box and make a physical inventory of the contents thereof. The committee shall, however, record its general observation of the ballots and other documents found in the ballot box. (Emphasis supplied)

Section 3, Rule 16 allows an additional ground for the printing of the ballot images: the determination by the parties that the printing is necessary. Clearly, even without signs of tampering or that the integrity of the ballots and the ballot boxes had been compromised, the parties may move for the printing of the ballot images. In this case, the COMELEC *En Banc* made it clear in its Comment [12] that the COMELEC First Division ordered the decryption, printing and examination of the digital images because the COMELEC First Division "discovered upon inspection that the integrity of the ballots themselves was compromised and that the ballot boxes were tampered."[13] **However, applying Section 3 of Rule 16, the finding of tampering was not even necessary for the COMELEC First Division to allow the printing of the ballot images.**

Saquilayan moved for the printing of the ballot images as early as 21 March 2011 before the trial court. Saquilayan reiterated his motion to have the ballot images printed when he filed his appeal brief [14] before the COMELEC First Division. Saquilayan pointed out that he filed reiterations of his motion to print with copies furnished to Maliksi until the COMELEC First Division ordered the printing.[15] There is nothing in the records which showed that Maliksi opposed Saquilayan's motion.

Section 3, Rule 9 of Resolution No. 8808 provides:

> Section 3. No hearings on motions. — Motions shall not be set for hearing unless the Commission directs otherwise. Oral argument in support thereof shall be allowed only upon the discretion of the Commission. **The adverse party may file opposition five days from receipt of the motion, upon the expiration of which such motion is deemed submitted for resolution**. The Commission shall resolve the motion within five days. (Emphasis supplied)

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[12] *Rollo*, pp. 484-516.

[13] *Id.* at 500.

[14] *Id.* at 237, Saquilayan's Comment, p. 25.

[15] *Id.*

When Maliksi did not oppose Saquilayan's motion for the printing of the ballot images, he is deemed to have waived his right to oppose the motion. The motion was deemed submitted for resolution. The COMELEC *En Banc* categorically stated that Maliksi "***never*** questioned the Order of decryption of the First Division nor did he raise any objection in any of the pleadings he filed with this Commission a fact which already places him under estoppel."[16] Maliksi could not claim that he was denied due process because he was not aware of the decryption proceedings. The Order[17] dated 28 March 2012 where the COMELEC First Division directed Saquilayan to deposit the required amount for expenses for the supplies, honoraria, and fee for the decryption of the CF cards was personally delivered to Maliksi's counsel. The Order[18] dated 17 April 2012 where the COMELEC First Division required Saquilayan to deposit an additional amount for expenses for the printing of additional ballot images from four clustered precincts was again personally delivered to Maliksi's counsel. Maliksi feigned ignorance of the decryption proceedings until he received the COMELEC First Division's Resolution of 15 August 2012.

As regards Maliksi's claim that he was deprived of his right to be present during the authentication process and the actual printing of the ballot images, Section 3 of Resolution No. 8804, as amended by Resolution No. 9164, does not require the parties or their representatives to be present during the printing of the ballot images. Maliksi should have moved to be present at, or to observe, the decryption proceedings when he received the 28 March 2012 Order directing the decryption. Maliksi did not, and thus he waived whatever right he had to be present at, or to observe, the decryption proceedings.

I emphasize that there is no denial of due process where there is opportunity to be heard, either through oral arguments

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[16] *Id.* at 61.

[17] *Id.* at 362.

[18] *Id.* at 366.

or pleadings.[19] Further, the fact that a party was heard on his motion for reconsideration negates any violation of the right to due process.[20] Maliksi's motion for reconsideration was directed against the entire resolution of the First Division, including the recount proceedings which he claimed to have violated his right to due process.

Maliksi alleged that the COMELEC First Division should have limited itself to reviewing the evidence on record, meaning the physical ballots, instead of using the decrypted images. Maliksi thus wanted the COMELEC First Division to ignore its finding of tampering. On this issue, the COMELEC *En Banc* stressed:

> x x x. Worth noting also is that these 8,387 ballots all came from 53 clustered precincts specifically pinpointed by Maliksi as his pilot precincts (which is 20% of the total precincts he protested) — thereby affecting a total of 33.38% or more than one-third (1/3) of the total ballots cast in those precincts. We find this too massive to have not been detected on election day, too specific to be random and too precise to be accidental which leaves a reasonable mind no other conclusion except that those 8,387 cases of double-shading were purposely machinated. These dubious and highly suspicious circumstances left us with no other option but to dispense with the physical ballots and resort to their digital images. To recount the tampered ballots will only yield us tampered results defeating the point of this appeal.[21]

In his Reflections submitted to this Court, Justice Perez stated that the present electoral contest is all about **over-voting**. Justice Perez cited Guideline No. 5 used by the COMELEC which states:

> 5. On over-voting. It has been the position of the Commission that over voting in a certain position will make the vote cast for that position stray but will not invalidate the entire ballot, so in case of

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[19] *Atty. Octava v. Commission on Elections*, 547 Phil. 647 (2007).

[20] See *German Management & Services, Inc. v. Court of Appeals*, 258 Phil. 289 (1989).

[21] *Rollo*, p. 60.

over-voting for the contested position, such vote shall be considered stray and will not be credited to any of the contending parties.

Justice Perez added that "in case of over-voting which is the case at hand, Guideline No. 5 outrightly provides the consequence that the vote shall be considered stray and will not be credited to any of the contending parties." Justice Perez stated that the COMELEC disobeyed its own rule that over-voting results in a stray vote.

This case is not a case of over-voting under Guideline No. 5. In **over voting** under Guideline No. 5, one person, that is, **the voter himself, votes for two or more persons for one elective position.** When the ballot is fed to the PCOS machine, the machine reads that two or more candidates for the same position had been shaded. The digital image will record two spaces shaded for one position. On the other hand, in **double-shading,** the voter shades the space for one candidate but another person, after the ballot is fed to the PCOS machine, surreptitiously shades another space for another candidate for the same position. In double-shading, the digital image shows only one shaded space for a candidate while the ballot shows two shaded spaces. In the present case, there was actually a double-shading (although it was inaccurately referred to as over-voting in the COMELEC First Division's Decision) which was done by person or persons other than the voter. When the ballot was fed to the PCOS machine, the machine read only one vote for one candidate for one position. After the double-shading, there were already two votes for two candidates for the same position, but the digital image still contains only one shaded space.

Here, the double-shading happened **after** the ballots were fed to and read by the PCOS machines because the digital images show only one shaded space while the ballots show two shaded spaces. **Double-shading is a post-election operation.** The double-shading covered 8,387 ballots, "exclusively affecting the position of Mayor and specifically

affecting the ballots of Saquilayan"[22] and the 8,387 affected ballots surprisingly all came from 53 clustered precincts "specifically pinpointed by Maliksi as his pilot precincts."[23]

The situation here is the one covered by Guideline No. 2 cited by Justice Perez which states that "[t]he best way to identify if a ballot has been tampered is to go to the digital image of the ballot as the PCOS was able to capture such when the ballot was fed by the voter into the machine when he cast his vote." This is what the COMELEC First Division did and the COMELEC First Division discovered that there was no double-shading in the digital images of the ballots. Obviously, the double-shading was done by persons other than the voters.

Again, Saquilayan raised the issue of tampering of the ballots as early as 21 March 20 l l before the trial court. The COMELEC First Division took into consideration the allegation of tampering. Even without the allegation of tampering, Section 3, Rule 16 of Resolution No. 8804, as amended by Resolution No. 9164, allows the parties to request for the printing of the ballot images if the parties deem it necessary. It is undisputed that Saquilayan requested the COMELEC for the printing of the ballot images and Maliksi did not file any opposition to Saquilayan's motions. Upon inspection of the ballots and ballot boxes, the COMELEC First Division found that the integrity of the ballots had been compromised. When the digital images of the ballots were examined, the COMELEC First Division found that there was no double-shading. As such, the ballots should not be considered stray under Guideline No. 5.

ACCORDINGLY, I vote to **DENY** with **FINALITY** the Extremely Urgent Motion for Reconsideration filed by Emmanuel L. Maliksi.

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[22] *Id.*

[23] *Id.*

SECOND DIVISION

[G.R. No. 171298. April 15, 2013]

SPOUSES OSCAR and THELMA CACAYORIN, *petitioners, vs.* **ARMED FORCES AND POLICE MUTUAL BENEFIT ASSOCIATION, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; COMPLAINT; THE ALLEGATIONS OF THE COMPLAINT DETERMINE THE NATURE OF THE ACTION AND THE JURISDICTION OF THE COURTS.— The settled principle is that "the allegations of the [C]omplaint determine the nature of the action and consequently the jurisdiction of the courts. This rule applies whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein as this is a matter that can be resolved only after and as a result of the trial."

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT; CONSIGNATION; A CASE FOR CONSIGNATION IS MADE OUT IF THE ALLEGATIONS OF THE COMPLAINT PRESENT A SITUATION WHERE THE CREDITOR IS UNKNOWN OR THAT TWO OR MORE ENTITIES APPEAR TO POSSESS THE SAME RIGHT TO COLLECT; CASE AT BAR.— Under Article 1256 of the Civil Code, the debtor shall be released from responsibility by the consignation of the thing or sum due, without need of prior tender of payment, when the creditor is absent or unknown, or when he is incapacitated to receive the payment at the time it is due, or when two or more persons claim the same right to collect, or when the title to the obligation has been lost. Applying Article 1256 to the petitioners' case as shaped by the allegations in their Complaint, the Court finds that a case for consignation has been made out, as it now appears that there are two entities which petitioners must deal with in order to fully secure their title to the property: 1) the Rural Bank (through PDIC), which is the apparent creditor under the July 4, 1994 Loan and Mortgage Agreement; and 2) AFPMBAI, which is currently in possession of the loan

documents and the certificate of title, and the one making demands upon petitioners to pay. Clearly, the allegations in the Complaint present a situation where the creditor is unknown, or that two or more entities appear to possess the same right to collect from petitioners. Whatever transpired between the Rural Bank or PDIC and AFPMBAI in respect of petitioners' loan account, if any, such that AFPMBAI came into possession of the loan documents and TCT No. 37017, it appears that petitioners were not informed thereof, nor made privy thereto.

3. ID.; ID.; ID.; ID.; ID.; PRIOR TENDER OF PAYMENT, WHEN NOT REQUIRED.— [T]he lack of prior tender of payment by the petitioners is not fatal to their consignation case. They filed the case for the exact reason that they were at a loss as to which between the two – the Rural Bank or AFPMBAI – was entitled to such a tender of payment. Besides, x x x Article 1256 authorizes consignation *alone*, without need of prior tender of payment, where the ground for consignation is that the creditor is unknown, or does not appear at the place of payment; or is incapacitated to receive the payment at the time it is due; or when, without just cause, he refuses to give a receipt; or when two or more persons claim the same right to collect; or when the title of the obligation has been lost.

4. ID.; ID.; ID.; ID.; ID.; NECESSARILY JUDICIAL.— On the question of jurisdiction, petitioners' case should be tried in the Puerto Princesa RTC, and not the HLURB. Consignation is necessarily judicial, as the Civil Code itself provides that consignation shall be made by depositing the thing or things due at the disposal of *judicial* authority, thus: "Art. 1258. **Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case**, and the announcement of the consignation in other cases." x x x

5. ID.; ID.; ID.; ID.; ID.; DISTINGUISHED FROM TENDER OF PAYMENT.— [Article 1258 of the Civil Code] clearly precludes consignation in venues other than the courts. Elsewhere, what may be made is a valid tender of payment, but not consignation. The two, however, are to be distinguished. "Tender of payment must be distinguished from consignation. Tender is the antecedent of consignation, that is, an act preparatory to the consignation, which is the principal, and from which are derived the immediate consequences which the debtor desires or seeks

to obtain. Tender of payment may be extrajudicial, while consignation is necessarily judicial, and the priority of the first is the attempt to make a private settlement before proceeding to the solemnities of consignation."

APPEARANCES OF COUNSEL

Robert Y. Peneyra for petitioners.
Rodrigo G. Artuz and *Randy F. Pablo* for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Consignation is necessarily judicial. Article 1258 of the Civil Code specifically provides that consignation shall be made by depositing the thing or things due at the disposal of *judicial* authority. The said provision clearly precludes consignation in venues other than the courts.

Assailed in this Petition for Review on *Certiorari*[1] are the September 29, 2005 Decision[2] of the Court of Appeals (CA) which granted the Petition for *Certiorari* in CA-G.R. SP No. 84446 and its January 12, 2006 Resolution[3] denying petitioners' Motion for Reconsideration.[4]

Factual Antecedents

Petitioner Oscar Cacayorin (Oscar) is a member of respondent Armed Forces and Police Mutual Benefit Association, Inc. (AFPMBAI), a mutual benefit association duly organized and existing under Philippine laws and engaged in the business of developing low-cost housing projects for personnel of the Armed

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[1] *Rollo*, pp. 9-30.

[2] *Id.* at 95-103; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo-Zenarosa.

[3] *Id.* at 111.

[4] *Id.* at 204-109.

Forces of the Philippines, Philippine National Police, Bureau of Fire Protection, Bureau of Jail Management and Penology, and Philippine Coast Guard. He filed an application with AFPMBAI to purchase a piece of property which the latter owned, specifically Lot 5, Block 8, Phase I, Kalikasan Mutual Homes, San Pedro, Puerto Princesa City (the property), through a loan facility.

On July 4, 1994, Oscar and his wife and co-petitioner herein, Thelma, on one hand, and the Rural Bank of San Teodoro (the Rural Bank) on the other, executed a Loan and Mortgage Agreement[5] with the former as borrowers and the Rural Bank as lender, under the auspices of Pag-IBIG or Home Development Mutual Fund's Home Financing Program.

The Rural Bank issued an August 22, 1994 letter of guaranty[6] informing AFPMBAI that the proceeds of petitioners' approved loan in the amount of ₱77,418.00 shall be released to AFPMBAI after title to the property is transferred in petitioners' name and after the registration and annotation of the parties' mortgage agreement.

On the basis of the Rural Bank's letter of guaranty, AFPMBAI executed in petitioners' favor a Deed of Absolute Sale,[7] and a new title – Transfer Certificate of Title No. 37017[8] (TCT No. 37017) – was issued in their name, with the corresponding annotation of their mortgage agreement with the Rural Bank, under Entry No. 3364.[9]

Unfortunately, the Pag-IBIG loan facility did not push through and the Rural Bank closed and was placed under receivership by the Philippine Deposit Insurance Corporation (PDIC). Meanwhile, AFPMBAI somehow was able to take possession of petitioners' loan documents and TCT No. 37017, while

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[5] *Id.* at 149-151.

[6] CA *rollo*, p. 26.

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

[8] *Id.* at 29.

[9] *Id.* (dorsal).

petitioners were unable to pay the loan/consideration for the property.

AFPMBAI made oral and written demands for petitioners to pay the loan/ consideration for the property.[10]

In July 2003, petitioners filed a Complaint[11] for consignation of loan payment, recovery of title and cancellation of mortgage annotation against AFPMBAI, PDIC and the Register of Deeds of Puerto Princesa City. The case was docketed as Civil Case No. 3812 and raffled to Branch 47 of the Regional Trial Court (RTC) of Puerto Princesa City (Puerto Princesa RTC). Petitioners alleged in their Complaint that as a result of the Rural Bank's closure and PDIC's claim that their loan papers could not be located, they were left in a quandary as to where they should tender full payment of the loan and how to secure cancellation of the mortgage annotation on TCT No. 37017. Petitioners prayed, thus:

a. That after the filing of this complaint an order be made allowing the consignation x x x of Php77,418.00.

b. For the court to compute and declare the amount of interest to be paid by the plaintiffs and thereafter to allow the consignation of the interest payments in order to give way for the full discharge of the loan.

c. To order the AFPMBAI to turn over to the custody of the court the loan records and title (T.C.T. No. 37017) of the plaintiffs if the same are in their possession.

d. To declare the full payment of the principal loan and interest and ordering the full discharge from mortgage of the property covered by T.C.T. No. 37017.

e. To order the Register of Deeds of Puerto Princesa City to cancel the annotation of real estate mortgage under Entry No. 3364 at the back of T.C.T. No. 37017.

f. Thereafter, to turn over to the plaintiffs their title free from the aforesaid mortgage loan.[12]

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[10] *Rollo*, p. 119.

[11] *Id.* at 45-51.

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

AFPMBAI filed a Motion to Dismiss[13] claiming that petitioners' Complaint falls within the jurisdiction of the Housing and Land Use Regulatory Board (HLURB) and not the Puerto Princesa RTC, as it was filed by petitioners in their capacity as buyers of a subdivision lot and it prays for specific performance of contractual and legal obligations decreed under Presidential Decree No. 957[14] (PD 957). It added that since no prior valid tender of payment was made by petitioners, the consignation case was fatally defective and susceptible to dismissal.

Ruling of the Regional Trial Court

In an October 16, 2003 Order,[15] the trial court denied AFPMBAI's Motion to Dismiss, declaring that since title has been transferred in the name of petitioners and the action involves consignation of loan payments, it possessed jurisdiction to continue with the case. It further held that the only remaining unsettled transaction is between petitioners and PDIC as the appointed receiver of the Rural Bank.

AFPMBAI filed a Motion for Reconsideration,[16] which the trial court denied in its March 19, 2004 Order.[17]

Ruling of the Court of Appeals

AFPMBAI thus instituted CA-G.R. SP No. 84446, which is a Petition for *Certiorari*[18] raising the issue of jurisdiction. On

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[13] *Id.* at 52-57.

[14] The Subdivision and Condominium Buyers' Protective Decree.

[15] *Rollo,* pp. 66-68; penned by Judge Perfecto E. Pe. The Order decreed as follows:

ALL THE FOREGOING CONSIDERED, the Court hereby denies the motion filed by the plaintiffs thru Counsel only as against the defendant AFPMBAI, but declared [sic] in default the other defendant PDIC. The Court hereby orders the defendant AFPMBAI to file its necessary pleading within fifteen (15) days from receipt of this order.

[16] CA *rollo,* pp. 54-58.

[17] *Id.* at 23.

[18] *Id.* at 2-19.

September 29, 2005, the CA rendered the assailed Decision decreeing as follows:

> **WHEREFORE**, premises considered, this Petition is **GRANTED**. The Assailed 16 October 2003 and 19 March 2004 Orders of the public respondent judge are hereby ordered **VACATED** and **SET ASIDE**.
>
> **SO ORDERED**.[19]

The CA held that Civil Case No. 3812 is a case for specific performance of AFPMBAI's contractual and statutory obligations as owner/developer of Kalikasan Mutual Homes, which makes PD 957 applicable and thus places the case within the jurisdiction of the HLURB. It said that since one of the remedies prayed for is the delivery to petitioners of TCT No. 37017, the case is cognizable exclusively by the HLURB.

Petitioners moved for reconsideration which was denied by the CA in its January 12, 2006 Resolution.

Hence, the instant Petition.

Issue

The sole issue that must be resolved in this Petition is: Does the Complaint in Civil Case No. 3812 fall within the exclusive jurisdiction of the HLURB?

Petitioners' Arguments

Petitioners assert that the elements which make up a valid case for consignation are present in their Complaint. They add that since a deed of absolute sale has been issued in their favor, and possession of the property has been surrendered to them, not to mention that title has been placed in their name, the HLURB lost jurisdiction over their case. And for this same reason, petitioners argue that their case may not be said to be one for specific performance of contractual and legal obligations under PD 957 as nothing more was left to be done in order to perfect or consolidate their title.

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[19] *Rollo*, pp. 102-103.

Petitioners thus pray that the herein assailed Decision and Resolution of the CA be set aside, and that the trial court be ordered to continue with the proceedings in Civil Case No. 3812.

Respondent's Arguments

Respondent, on the other hand, insists in its Comment[20] that jurisdiction over petitioners' case lies with the HLURB, as it springs from their contractual relation as seller and buyer, respectively, of a subdivision lot. The prayer in petitioners' Complaint involves the surrender or delivery of the title after full payment of the purchase price, which respondent claims are reciprocal obligations in a sale transaction covered by PD 957. Respondent adds that in effect, petitioners are exacting specific performance from it, which places their case within the jurisdiction of the HLURB.

Our Ruling

The Court grants the Petition.

The Complaint makes out a case for consignation.

The settled principle is that "the allegations of the [C]omplaint determine the nature of the action and consequently the jurisdiction of the courts. This rule applies whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein as this is a matter that can be resolved only after and as a result of the trial."[21]

Does the Complaint in Civil Case No. 3812 make out a case for consignation? It alleges that:

6.0 – Not long after however, RBST[22] closed shop and defendant Philippine Deposit Insurance Corporation (PDIC) was appointed as

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[20] *Id.* at 114-130.

[21] *Bulao v. Court of Appeals*, G.R. No. 101983, February 1, 1993, 218 SCRA 321, 323, citing *Magay v. Estiandan*, 161 Phil. 586, 590 (1976).

[22] The Rural Bank of San Teodoro.

its receiver. The plaintiffs, through a representative, made a verbal inquiry to the PDIC regarding the payment of their loan but were told that it has no information or record of the said loan. This made [sic] the plaintiffs in quandary as to where or whom they will pay their loan, which they intend to pay in full, so as to cancel the annotation of mortgage in their title.

7.0 – It was discovered that the loan papers of the plaintiffs, including the duplicate original of their title, were in the possession of defendant AFPMBAI. It was unclear though why the said documents including the title were in the possession of AFPMBAI. These papers should have been in RBST's possession and given to PDIC after its closure in the latter's capacity as receiver.

8.0 – Plaintiffs are now intending to pay in full their real estate loan but could not decide where to pay the same because of RBST [sic] closure and PDIC's failure to locate the loan records and title. This court's intervention is now needed in order to determine to [sic] where or whom the loan should be paid.

9.0 – Plaintiffs hereby respectfully prays [sic] for this court to allow the deposit of the amount of Php77,418.00 as full payment of their principal loan, excluding interest, pursuant to the Loan and Mortgage Agreement on 4 July 1994.[23]

From the above allegations, it appears that the petitioners' debt is outstanding; that the Rural Bank's receiver, PDIC, informed petitioners that it has no record of their loan even as it took over the affairs of the Rural Bank, which on record is the petitioners' creditor as per the July 4, 1994 Loan and Mortgage Agreement; that one way or another, AFPMBAI came into possession of the loan documents as well as TCT No. 37017; that petitioners are ready to pay the loan in full; however, under the circumstances, they do not know which of the two – the Rural Bank or AFPMBAI – should receive full payment of the purchase price, or to whom tender of payment must validly be made.

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[23] *Rollo,* pp. 47-48.

Under Article 1256 of the Civil Code,[24] the debtor shall be released from responsibility by the consignation of the thing or sum due, without need of prior tender of payment, when the creditor is absent or unknown, or when he is incapacitated to receive the payment at the time it is due, or when two or more persons claim the same right to collect, or when the title to the obligation has been lost. Applying Article 1256 to the petitioners' case as shaped by the allegations in their Complaint, the Court finds that a case for consignation has been made out, as it now appears that there are two entities which petitioners must deal with in order to fully secure their title to the property: 1) the Rural Bank (through PDIC), which is the apparent creditor under the July 4, 1994 Loan and Mortgage Agreement; and 2) AFPMBAI, which is currently in possession of the loan documents and the certificate of title, and the one making demands upon petitioners to pay. Clearly, the allegations in the Complaint present a situation where the creditor is unknown, or that two or more entities appear to possess the same right to collect from petitioners. Whatever transpired between the Rural Bank or PDIC and AFPMBAI in respect of petitioners' loan account, if any, such that AFPMBAI came into possession of the loan documents and TCT No. 37017, it appears that petitioners were not informed thereof, nor made privy thereto.

Indeed, the instant case presents a unique situation where the buyer, through no fault of his own, was able to obtain title to real property in his name even before he could pay the purchase

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[24] Art. 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.

Consignation alone shall produce the same effect in the following cases:

(1) When the creditor is absent or unknown, or does not appear at the place of payment;

(2) When he is incapacitated to receive the payment at the time it is due;

(3) When, without just cause, he refuses to give a receipt;

(4) When two or more persons claim the same right to collect;

(5) When the title of the obligation has been lost.

price in full. There appears to be no vitiated consent, nor is there any other impediment to the consummation of their agreement, just as it appears that it would be to the best interests of all parties to the sale that it be once and for all completed and terminated. For this reason, Civil Case No. 3812 should at this juncture be allowed to proceed.

Moreover, petitioners' position is buttressed by AFPMBAI's own admission in its Comment[25] that it made oral and written demands upon the former, which naturally aggravated their confusion as to who was their rightful creditor to whom payment should be made – the Rural Bank or AFPMBAI. Its subsequent filing of the Motion to Dismiss runs counter to its demands to pay. If it wanted to be paid with alacrity, then it should not have moved to dismiss Civil Case No. 3812, which was brought precisely by the petitioners in order to be able to finally settle their obligation in full.

Finally, the lack of prior tender of payment by the petitioners is not fatal to their consignation case. They filed the case for the exact reason that they were at a loss as to which between the two – the Rural Bank or AFPMBAI – was entitled to such a tender of payment. Besides, as earlier stated, Article 1256 authorizes consignation *alone*, without need of prior tender of payment, where the ground for consignation is that the creditor is unknown, or does not appear at the place of payment; or is incapacitated to receive the payment at the time it is due; or when, without just cause, he refuses to give a receipt; or when two or more persons claim the same right to collect; or when the title of the obligation has been lost.

Consignation is necessarily judicial; hence, jurisdiction lies with the RTC, not with the HLURB.

On the question of jurisdiction, petitioners' case should be tried in the Puerto Princesa RTC, and not the HLURB.

[25] *Rollo*, p. 119.

Consignation is necessarily judicial,[26] as the Civil Code itself provides that consignation shall be made by depositing the thing or things due at the disposal of *judicial* authority, thus:

Art. 1258. **Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case**, and the announcement of the consignation in other cases.

The consignation having been made, the interested parties shall also be notified thereof. (Emphasis and underscoring supplied)

The above provision clearly precludes consignation in venues other than the courts. Elsewhere, what may be made is a valid tender of payment, but not consignation. The two, however, are to be distinguished.

Tender of payment must be distinguished from consignation. Tender is the antecedent of consignation, that is, an act preparatory to the consignation, which is the principal, and from which are derived the immediate consequences which the debtor desires or seeks to obtain. Tender of payment may be extrajudicial, while consignation is necessarily judicial, and the priority of the first is the attempt to make a private settlement before proceeding to the solemnities of consignation. (8 Manresa 325).[27]

While it may be true that petitioners' claim relates to the terms and conditions of the sale of AFPMBAI's subdivision lot, this is overshadowed by the fact that since the Complaint in Civil Case No. 3812 pleads a case for consignation, the HLURB is without jurisdiction to try it, as such case may only be tried by the regular courts.

WHEREFORE, premises considered, the Petition is **GRANTED**. The September 29, 2005 Decision and January

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[26] *Soco v. Hon. Militante*, 208 Phil. 151, 159 (1983); *Mclaughlin v. Court of Appeals*, 229 Phil. 8, 18 (1986); *Meat Packing Corporation of the Philippines v. Sandiganbayan*, 411 Phil. 959, 973 (2001); *B.E. San Diego, Inc. v. Alzul*, G.R. No. 169501, June 8, 2007, 524 SCRA 402, 426, 428-429.

[27] *Soco v. Hon. Militante, supra* at 160-161.

12, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 84446 are **ANNULLED** and **SET ASIDE**. The October 16, 2003 and March 19, 2004 Orders of the Regional Trial Court of Puerto Princesa City, Branch 47, are **REINSTATED**, and the case is **REMANDED** to the said court for continuation of the proceedings.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *Perez,* and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 175428. April 15, 2013]

RICARDO CHU, JR. and DY KOK ENG, *petitioners, vs.* **MELANIA CAPARAS and SPOUSES RUEL AND HERMENEGILDA PEREZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; SHALL RAISE ONLY QUESTIONS OF LAW; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— [W]e find that the resolution of the petition necessarily requires the re-evaluation of the factual findings of the RTC and of the CA. Essentially, what the petitioners seek in this petition is a relief from the Court on the issue of encroachment, as well as the issues of prematurity and propriety of the award of damages that are intertwined with the issue of encroachment. On this point alone, the petition must fail, as a Rule 45 petition bars us from the consideration of factual issues. Repeatedly, this Court has ruled that a petition for review on

[*] Per Raffle dated April 10, 2013.

certiorari under Rule 45 of the Rules of Court shall raise only questions of law and not questions of facts. *"A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts."* The question, to be one of law, must rest solely on what the law provides on the given set of circumstances and should avoid the scrutiny of the probative value of the parties' evidence. Once the issue invites a review of the factual findings of the RTC and of the CA, as in this case, the question posed is one of fact that is proscribed in a Rule 45 petition. The Court's jurisdiction under a Rule 45 review is limited to reviewing perceived errors of law, which the lower courts may have committed. The resolution of factual issues is the function of the lower courts whose findings, when aptly supported by evidence, bind this Court. This is especially true when the CA affirms the lower court's findings, as in this case. While this Court, under established exceptional circumstances, had deviated from the above rule, we do not find this case to be under any of the exceptions.

2. ID.; ACTIONS; ACTION FOR RECONVEYANCE; TO WARRANT RECONVEYANCE OF THE LAND, THE PLAINTIFF MUST ALLEGE AND PROVE OWNERSHIP OF THE LAND IN DISPUTE AND THE DEFENDANT'S ERRONEOUS, FRAUDULENT OR WRONGFUL REGISTRATION OF THE PROPERTY.— An action for reconveyance is a legal and equitable remedy that seeks to transfer or reconvey property, wrongfully registered in another person's name, to its rightful owner. To warrant reconveyance of the land, the plaintiff must allege and prove, among others, ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property. In the present petition, the petitioners failed to prove that the parcel of land they owned was the subject property. Logically, there is nothing to reconvey as what the spouses Perez registered in their names did not include the parcel of land which the petitioners, by their evidence, own.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; TRUSTS; NO TRUST IS CREATED WHEN THE PROPERTY OWNED BY ONE PARTY IS SEPARATE AND DISTINCT FROM THAT WHICH HAS BEEN REGISTERED IN ANOTHER'S NAME.—

A trust by operation of law is the right to the beneficial enjoyment of a property whose legal title is vested in another. A trust presumes the existence of a conflict involving one and the same property between two parties, one having the rightful ownership and the other holding the legal title. There is no trust created when the property owned by one party is separate and distinct from that which has been registered in another's name. In this case, the Caparas survey plan and the deed of sale between the petitioners and Miguela showed that **the parcel of land** sold to the petitioners is distinct from the consolidated parcels of land sold by Caparas to the spouses Perez.

4. ID.; SPECIAL CONTRACTS; SALES; PURCHASER IN GOOD FAITH; TO BE DEEMED A PURCHASER IN GOOD FAITH, THERE MUST BE ABSENCE OF NOTICE THAT SOME OTHER PERSON HAS A RIGHT TO OR INTEREST IN SUCH PROPERTY.— To be deemed a purchaser in good faith, there must be absence of notice that some other person has a right to or interest in such property. The established facts show that the spouses Perez had been in possession of the subject property since 1991, while the petitioners purchased the subject property only on July 24, 1994. Had the petitioners actually verified the status of the subject property before they purchased it, they would have known of the spouses Perez's interest therein. More importantly, the land registration court has confirmed the spouses Perez's title over the subject property on March 1, 1994 or months prior to the petitioners' purchase. As the RTC and the CA correctly ruled, the petitioners were deemed to have been placed on constructive notice of the spouses Perez's title since the registration proceedings are *in rem.*

APPEARANCES OF COUNSEL

Alan A. Leynes for petitioners.
Santos V. Pampolina, Jr. for respondents.

D E C I S I O N

BRION, *J.*:

Under consideration is the petition for review on *certiorari*[1] under Rule 45 of the Rules of Court challenging the decision[2] dated August 7, 2006 of the Court of Appeals (*CA*) in CA-G.R. CV No. 67243. The CA affirmed the decision[3] dated February 19, 1998 of the Regional Trial Court *(RTC)* of Tagaytay City, Branch 18, in Civil Case No. TG-1541, dismissing the complaint for recovery of possession of a parcel of land filed by petitioners Ricardo Chu, Jr. and Dy Kok Eng against respondents Melania Caparas and spouses Ruel and Hermenegilda Perez.

The Factual Antecedents

At the root of the case is a ***parcel of land with an area of 26,151 square meters*** (*subject property*) located at Maguyam, Silang, Cavite, originally owned and registered in the name of Miguela Reyes and covered by Tax Declaration (*TD*) No. 9529.[4]

On November 10, 1995, the petitioners filed a complaint to recover possession of the subject property[5] against the respondents, with a prayer to annul the sale of the subject property executed between the respondents. In the complaint, the petitioners alleged that they are the successors-in-interest of Miguela over the subject property, which Caparas held in trust for Miguela. The petitioners also averred that the subject property

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[1] *Rollo*, pp. 8-26.

[2] Penned by Associate Justice Santiago Javier Ranada, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino; *id.* at 31-38. The CA's November 8, 2006 resolution denied for lack of sufficient merit the petitioners' motion for reconsideration; *id.* at 40.

[3] Penned by Judge Alfonso S. Garcia; CA *rollo*, pp. 38-49.

[4] *Rollo*, p. 32.

[5] Complaint dated September 15, 1995; records, pp. 1-6.

was erroneously included in the sale of land between the respondents.

The respondents failed to file an answer to the complaint and were declared in default. The RTC thus allowed the petitioners to present their evidence *ex parte* against the respondents.

The petitioners' evidence showed that the ***subject property was previously part of the 51,151-square meter tract of land*** owned by Miguela at Maguyam, Silang, Cavite. On July 5, 1975, Miguela ***sold to Caparas 25,000 square meters of the eastern portion*** of the 51,151-square meter tract of land. Miguela retained for herself the balance (or 26,151 square meters) of the subject property, located at the **western portion** of the original 51,151-square meter property. Further, the deed of conveyance executed between Miguela and Caparas, entitled "*Kasulatan ng Tuluyang Bilihan ng Lupa*,"[6] described the boundaries of the parcel of land purchased by Caparas as: "*sa ibaba ay Faustino Amparo, sa silangan ay Silang at Carmona boundary, sa ilaya ay Aquilino Ligaya, at sa kanluran ay ang natitirang lupa ni Miguela Reyes*[.]"[7]

The petitioners asserted that more than fourteen (14) years later, Caparas caused the preparation of a consolidated survey plan[8] (*Caparas survey plan*) under her name for several parcels of land (*consolidated parcels of land*) located at Silang-Carmona, Cavite, with a total land area of 40,697 square meters. Under the Caparas survey plan, the parcel of land supposedly retained by Miguela was erroneously transferred to the **eastern portion** of the original 51,151-square meter tract of land. As a result of the error, the subject property was included in the consolidated parcels of land owned by Caparas. The petitioners asserted that Caparas admitted the wrongful inclusion of the subject property owned by Miguela in the consolidated parcels

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[6] *Id.* at 16-17.

[7] *Id.* at 16.

[8] Ccs-04-000872-D, Silang-Carmona, Cavite Cadastre No. 452-D; *rollo*, p. 32.

of land through Caparas' "*Sinumpaang Salaysay ng Pagpapatotoo*"[9] dated August 27, 1990.

The petitioners also alleged that on November 8, 1991, Caparas sold to the spouses Perez the consolidated parcels of land in a deed entitled "*Kasulatan ng Bilihang Tuluyan.*" The petitioners claimed that included in the aforesaid sale was a parcel of land with boundary description similar to the 25,000-square meter parcel of land sold by Miguela to Caparas.

According to the petitioners, Miguela, on July 24, 1994, sold the subject property to the petitioners[10] for which they (the petitioners) secured a tax declaration (TD No. 22477-A).[11] Considering the alleged error in the Caparas survey plan, the petitioners demanded the reconveyance of the subject property from Caparas and the spouses Perez, who refused to reconvey the subject property.

After an *ex parte* hearing, the RTC ruled in the petitioners' favor.[12] The RTC, however, refused to approve, for lack of authority, the new survey plan for the subject property[13] that the petitioners submitted.

The spouses Perez filed a petition for relief from judgment[14] on the ground of excusable negligence. The spouses Perez averred that the parcel of land sold to the petitioners was not the subject property whose title had been confirmed in their (spouses Perez's) names.[15] In the alternative, the spouses Perez claimed that they bought the subject property in good faith and for value and had been in open, continuous, public and adverse possession of it since 1991.

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[9] Records, pp. 20-21.

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

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

[12] Decision dated June 24, 1996.

[13] Records, pp. 44-45 and 134.

[14] *Id.* at 51-55.

[15] Judgment rendered by the RTC, Tagaytay City, Branch XVIII in LRC Case No. TG-429; *id.* at 61-62.

The RTC Ruling

On February 19, 1998, the RTC rendered a decision[16] setting aside its earlier decision, and dismissed the petitioners' complaint for lack of merit.

The RTC held that the petitioners had no sufficient cause of action for reconveyance and damages against the respondents. ***The RTC found that Chu admitted during cross-examination***[17] ***that the parcel of land sold to them was different from the subject property.***

The RTC also rejected the petitioners' claim that they were purchasers in good faith of the subject property considering that the spouses Perez's title over the consolidated parcels of land was registered. The RTC ruled that even granting that the subject property was included in the consolidated parcels of land sold to the spouses Perez, the petitioners were deemed to have knowledge of the spouses Perez's interest therein.

Finally, considering the petitioners' unfounded claims, the RTC ordered the petitioners to pay the spouses Perez moral and exemplary damages, attorney's fees and the costs of suit.

The petitioners appealed the RTC decision to the CA, assigning as errors the failure of the RTC: (1) to recognize that there was an encroachment when the subject property was included in the Caparas survey plan as part of the consolidated parcels of land owned by Caparas; and (2) to consider the petitioners' lack of malice or bad faith in filing the case against Caparas and the spouses Perez that would justify the award of damages and attorney's fees.[18]

The Ruling of the CA

In its August 7, 2006 decision,[19] the CA dismissed the petitioners' appeal and affirmed the February 19, 1998 decision

[16] *Supra* note 3.

[17] CA *rollo*, pp. 44-46.

[18] *Id.* at 26-36.

[19] *Supra* note 2.

of the RTC. The CA declared that the petitioners' resort to the court was premature since there was no proof that the Bureau of Lands revoked its approval of the Caparas survey plan. In any event, the CA declared that Chu's admission and the existing and duly approved Caparas survey plan belied their claim of encroachment in the petitioners' property by the spouses Perez.

The CA also affirmed the RTC's finding that the petitioners were presumed to have knowledge of the spouses Perez's registered title over the subject property.

Finally, the CA upheld the RTC's refusal to approve, for lack of authority, the new survey plan that the petitioners submitted and also upheld the award of damages, attorney's fees, and costs. The CA's denial of the petitioner's motion for reconsideration[20] prompted the present recourse.

The Petition

The petitioners impute serious error and grave abuse of discretion on the findings of the CA that: *first*, there was no encroachment made by the spouses Perez in the petitioners' property; s*econd*, the filing of the petitioners' complaint was premature; and *third,* the petitioners are liable for moral and exemplary damages and attorney's fees.[21]

The petitioners insist that the CA misunderstood the term "encroachment." They argue that this case **involves technical encroachment and not mere physical encroachment.** There was technical encroachment due to the mistake in the Caparas survey plan that included the subject property as among the consolidated parcels of land owned by Caparas.

The petitioners explained that the "*Kasulatan ng Tuluyang Bilihan ng Lupa*,"[22] between Miguela and Caparas, referred to a parcel of land located at the **eastern portion** of the original

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[20] Dated August 28, 2006; *rollo,* pp. 81-90.

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

[22] See note 6.

51,151-square meter tract of land. Under the Caparas survey plan however, the parcel of land retained by Miguela (and thereafter sold to the petitioners) became the parcel of land located at the **eastern portion** of the 51,151-square meter tract of land (designated as Lot No. 3); the portion on the **west** of the 51,151-square meter tract of land (the subject property) was designated as Lot No. 1 and was included in Caparas' consolidated parcels of land sold to the spouses Perez.

Similarly, the petitioners assert that the CA also disregarded the evidence of Caparas' "*Sinumpaang Salaysay ng Pagpapatotoo*"[23] on Miguela's ownership of the subject property and Caparas' admission that she was merely a trustee thereof. The petitioners also assert that the CA should have also considered that the spouses Perez, as Caparas' successors-in-interest, are also trustees in the subject property.

Finally, the petitioners insist that the award of damages and attorney's fees to the spouses Perez was improper since they own the subject property.

The Case for the Respondents

The spouses Perez, relying on the rulings of the RTC and of the CA, maintain[24] that: (1) the petitioners' resort to the court was premature as they failed to prove their claim of encroachment; (2) the petitioners cannot be deemed purchasers in good faith over the subject property; and (3) the RTC has no authority to approve or cancel survey plans.

The spouses Perez also assert that the petition does not raise any issue of law but only questions of facts not proper for a Rule 45 petition. They submit that the factual findings of the CA, duly passed upon, are binding and conclusive on this Court, and the alleged technical encroachment, which the petitioners insist as the real issue obtaining in this case, is better addressed

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[23] See note 9.

[24] Comment dated March 20, 2007; *rollo*, pp. 92-95. The arguments were essentially reiterated in their Memorandum dated October 9, 2007; *rollo,* pp. 104-111.

to the appropriate administrative authorities. Caparas did not file her comment and memorandum.

The Issue

In sum, the **core issue** for determination is: ***whether the parcel of land sold to the petitioners is the subject property included in the consolidated parcels of land sold to the spouses Perez***.

The Court's Ruling

We affirm the decision and the resolution of the CA.

Preliminary considerations

At the outset, we find that the resolution of the petition necessarily requires the re-evaluation of the factual findings of the RTC and of the CA. Essentially, what the petitioners seek in this petition is a relief from the Court on the issue of encroachment, as well as the issues of prematurity and propriety of the award of damages that are intertwined with the issue of encroachment. On this point alone, the petition must fail, as a Rule 45 petition bars us from the consideration of factual issues.

Repeatedly, this Court has ruled that a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law and not questions of facts. "*A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts*."[25] The question, to be one of law, must rest solely on what the law provides on the given set of circumstances and should avoid the scrutiny of the probative value of the parties' evidence.[26] Once the issue invites a review of the factual

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[25] *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38, 46. See also *Republic v. De Guzman*, G.R. No. 175021, June 15, 2011, 652 SCRA 101, 113; and *Heirs of Nicolas S. Cabigas v. Limbaco*, G.R. No. 175291, July 27, 2011, 654 SCRA 643, 651-652. (All citations omitted.)

[26] *Lorzano v. Tabayag, Jr., supra*, at 46-47; *Republic v. De Guzman, supra*, at 113-114; and *Heirs of Pacencia Racaza v. Abay-abay*, G.R. No. 198402, June 13, 2012, 672 SCRA 622, 628. (All citations omitted.)

findings of the RTC and of the CA, as in this case, the question posed is one of fact that is proscribed in a Rule 45 petition.[27]

The Court's jurisdiction under a Rule 45 review is limited to reviewing perceived errors of law, which the lower courts may have committed.[28] The resolution of factual issues is the function of the lower courts whose findings, when aptly supported by evidence, bind this Court. This is especially true when the CA affirms the lower court's findings,[29] as in this case. While this Court, under established exceptional circumstances, had deviated from the above rule, we do not find this case to be under any of the exceptions.

Nevertheless, we still affirm the assailed CA rulings even if we were to disregard these established doctrinal rules.

On the issue of encroachment and prematurity of the action

A review of the records from the RTC and the CA reveals that both arrived at the same factual consideration – there was no encroachment. We agree with this factual finding for the following reasons:

First, the records undoubtedly established that the subject property was not the parcel of land that the petitioners purchased from Miguela. We note that the ***Caparas survey plan was used in identifying the property purchased by the petitioners from Miguela***. The deed of sale between them showed what the petitioners purchased from Miguela referred to another parcel of land designated as Lot No. 3 in the Caparas survey plan, while the subject property was designated as Lot No. 1 of the same plan. ***Significantly, Chu also admitted that the parcel***

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[27] *Lorzano v. Tabayag, Jr., supra,* at 47.

[28] *Sps. Crisanto Alcazar and Susana Villamayor v. Evelyn Arante,* G.R. No. 177042, December 10, 2012; and *Heirs of Pacencia Racaza v. Abay-abay, supra* note 25, at 627.

[29] *Land Bank of the Philippines v. Barbara Sampaga Poblete,* G.R. No. 196577, February 25, 2013; and *Eterton Multi-Resources Corporation v. Filipino Pipe and Foundry Corporation,* G.R. No. 179812, July 6, 2010, 624 SCRA 148, 154.

of land they purchased from Miguela was different from the subject property.

The following pieces of evidence adduced *by the petitioners* also support the above conclusion:

1. The contents in the Deed of Absolute Sale between Miguela and the petitioners,[30] dated July 24, 1994, which described the parcel of land sold by Miguela to the petitioners as **Lot No. 3, per Ccs-04-000872-D and covered by TD No. 22312-A**;

2. The tax declaration (TD No. 22312-A)[31] **under Miguela's name** for the year 1996 involving **Lot No. 3 Ccs-04-000872-D**, with boundary description as NE- creek, NW- creek, SE- Lot No. 10565, and SW- Lot. No. 1;

3. The tax declaration (TD No. 22477-A)[32] **under the petitioners' name** for the year 1996, which cancelled TD No. 22312, likewise covering **Lot No. 3, Ccs-04-000872-D** with the same boundary description as stated in the cancelled TD.

In contrast with these pieces of evidence, the spouses Perez's Original Certificate of Title No. P-3123[33] covering the subject property and their actual occupation of this property since 1991 duly established their ownership of this property. Clearly then, there was no encroachment by the spouses Perez since they were the owners of the subject property. There was also no evidence to prove that the spouses Perez encroached on the parcel of land (Lot No. 3) belonging to the petitioners.

Second, contrary to the petitioners' assertion, what Caparas admitted in the *"Sinumpaang Salaysay ng Pagpapatotoo"* was the erroneous inclusion of **Lot No. 3** in the Caparas survey plan and its implication that Lot No. 3 belonged to Caparas. It was for this reason that Caparas acknowledged Miguela's ownership of Lot No. 3.

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[30] Records, pp. 9-10.

[31] *Id.* at 35.

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

[33] *Id.* at 152-153.

On the Action for reconveyance

In light of the above, the petitioners' action against Caparas and the spouses Perez for reconveyance, based on trust, must fail for lack of basis. An action for reconveyance is a legal and equitable remedy that seeks to transfer or reconvey property, wrongfully registered in another person's name, to its rightful owner.[34] To warrant reconveyance of the land, the plaintiff must allege and prove, among others,[35] ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property.[36]

In the present petition, the petitioners failed to prove that the parcel of land they owned was the subject property. Logically, there is nothing to reconvey as what the spouses Perez registered in their names did not include the parcel of land which the petitioners, by their evidence, own.

We also see no trust, express or implied, created between the petitioners and the spouses Perez over the subject property. A trust by operation of law is the right to the beneficial enjoyment of a property whose legal title is vested in another.[37] A trust

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[34] *Leoveras v. Valdez*, G.R. No. 169985, June 15, 2011, 652 SCRA 61, 71; and *Guizano v. Veneracion*, G.R. No. 191128, September 12, 2012, 680 SCRA 519, 526. (Citations omitted.)

[35] See *New Regent Sources, Inc. v. Tanjuatco, Jr.*, G.R. No. 168800, April 16, 2009, 585 SCRA 329, 336-337, which enumerated the other requisites that must concur for an action for reconveyance to prosper: "(1) the action must be brought in the name of a person claiming ownership or dominical right over the land registered in the name of the defendant; (2) the registration of the land in the name of the defendant was procured through fraud or other illegal means; (3) the property has not yet passed to an innocent purchaser for value; and (4) the action is filed after the certificate of title had already become final and incontrovertible but within four years from the discovery of the fraud or not later than 10 years in the case of an implied trust. (Citations omitted.)

[36] *Leoveras v. Valdez*, *supra* note 33, at 71.

[37] *Philippine National Bank v. Aznar*, G.R. Nos. 171805 and 172021, May 30, 2011, 649 SCRA 214, 230; and *Estate of Margarita D. Cabacungan v. Laigo*, G.R. No. 175073, August 15, 2011, 655 SCRA 366, 376. (Citations omitted.)

presumes the existence of a conflict involving one and the same property between two parties, one having the rightful ownership and the other holding the legal title. There is no trust created when the property owned by one party is separate and distinct from that which has been registered in another's name.

In this case, the Caparas survey plan and the deed of sale between the petitioners and Miguela showed that **the parcel of land** sold to the petitioners is distinct from the consolidated parcels of land sold by Caparas to the spouses Perez.

Although we are aware of an apparent discrepancy between the boundary description of the parcel of land described in the *"Kasulatan ng Tuluyang Bilihan ng Lupa"* executed between Caparas and Miguela, the *"Kasulatan ng Tuluyang Bilihan ng Lupa"* executed between Caparas and the spouses Perez, and Caparas' TD on the one hand, and the boundary description of the consolidated parcels of land stated in the Caparas survey plan and the spouses Perez's title on the other hand, we find the discrepancy more imagined than real. This perceived discrepancy does not help the petitioners' cause ***in light of the evidence that the deed of sale between the petitioners and Miguela used the Caparas survey plan that clearly identified the parcel of land sold to them was different from the subject property***.

Even granting that the Caparas survey plan did erroneously switch the positions of the petitioners' and the spouses Perez's respective landholdings, we agree with the RTC that reconveyance was still an inappropriate remedy. The petitioners' recourse should have been to file the proper action before the Department of Environment and Natural Resources-Land Management Bureau for the cancellation of the Caparas survey plan and for the approval of a new survey plan[38] that correctly reflects the position of their respective landholdings. For until the Caparas survey plan has been cancelled, the petitioners' claim of encroachment has no basis.

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[38] See *Carpo v. Ayala Land, Incorporated,* G.R. No. 166577, February 3, 2010, 611 SCRA 436, 452-453. See also Section 4(15), Chapter 1, Title XIV of Executive Order No. 297 or the Administrative Code of 1987.

Another perspective, too, that must be considered is Miguela's act in selling to the petitioners Lot No. 3 using the Caparas survey plan, which can be regarded as a ratification of any perceived error under the circumstances.

On the propriety of the award of damages and attorney's fees

Based on the above discussion, we find the award of damages and attorney's fees in the spouses Perez's favor proper.

First, assuming that Miguela sold to the petitioners the subject property, the petitioners cannot be deemed to be purchasers in good faith. To be deemed a purchaser in good faith, there must be absence of notice that some other person has a right to or interest in such property.[39] The established facts show that the spouses Perez had been in possession of the subject property since 1991, while the petitioners purchased the subject property only on July 24, 1994. Had the petitioners actually verified the status of the subject property before they purchased it, they would have known of the spouses Perez's interest therein. More importantly, the land registration court has confirmed the spouses Perez's title over the subject property on March 1, 1994 or months prior to the petitioners' purchase. As the RTC and the CA correctly ruled, the petitioners were deemed to have been placed on constructive notice of the spouses Perez's title since the registration proceedings are *in rem*.[40]

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[39] See *Heirs of Nicolas S. Cabigas v. Limbaco, supra* note 24, at 656. (Citation omitted.)

[40] *Ting v. Heirs of Diego Lirio,* G.R. No. 168913, March 14, 2007, 518 SCRA 334, 338; *De La Cruz v. Court of Appeals*, 458 Phil. 929, 941 (2003). See Section 31 of Presidential Decree No. 1529 provides in part:

"Section 31. *Decree of Registration.* – x x x

The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be **conclusive upon and against all persons, including the National Government and all branches thereof, whether mentioned by name in the application or notice**, the same being included in the general description 'To all whom it may concern.'" (emphasis ours; italics supplied)

Second, the petitioners undoubtedly filed and pursued an unfounded claim against the spouses Perez, for which the latter incurred unnecessary expenses to protect their interests. To repeat, the petitioners' action for reconveyance against the spouses Perez completely had no basis.

Finally, the RTC correctly ruled that the petitioners are liable to pay moral and exemplary damages, attorney's fees and the costs of suit, pursuant to Article 2217 in relation to Article 2219,[41] Article 2229[42] and Article 2208[43] of the Civil Code. As the RTC correctly observed, Chu was a lawyer and

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[41] Articles 2217 and 2219 of the Civil Code provide:

"Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act for omission."

"Art. 2219. Moral damages may be recovered in the following and analogous cases:

x x x x x x x x x

(8) Malicious prosecution;

x x x x x x x x x

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35." (emphasis ours)

[42] Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[43] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) **When exemplary damages are awarded;**

x x x x x x x x x

(4) **In case of a clearly unfounded civil action or proceeding against the plaintiff;**

x x x x x x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable. [emphasis ours]

a businessman. He and his co-petitioner were expected to exercise more prudence in their transactions before instituting a clearly unfounded action against innocent third persons on the premise that they committed a mistake for which they themselves are to blame.

WHEREFORE, in view of these considerations, we hereby **DENY** the petition and accordingly **AFFIRM** the decision dated August 7, 2006 and the resolution dated November 8, 2006 of the Court of Appeals in CA-G.R. CV No. 67243. Costs against the petitioners.

SO ORDERED.

Carpio, del Castillo, Perez, and *Perlas-Bernabe, JJ.*, concur.

THIRD DIVISION

[G.R. No. 179011. April 15, 2013]

REY CASTIGADOR CATEDRILLA, *petitioner, vs.* **MARIO and MARGIE**[1] **LAURON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; A COMPLAINT FOR UNLAWFUL DETAINER MAY BE FILED BY A CO-OWNER WITHOUT THE NECESSITY OF JOINING ALL THE OTHER CO-OWNERS AS CO-PLAINTIFFS; CASE AT BAR.— Petitioner can file the action for ejectment without impleading his co-owners. x x x In this case, although petitioner alone filed the complaint for

[1] Sometimes spelled as Mergie in some pleadings.

unlawful detainer, he stated in the complaint that he is one of the heirs of the late Lilia Castigador, his mother, who inherited the subject lot, from her parents. Petitioner did not claim exclusive ownership of the subject lot, but he filed the complaint for the purpose of recovering its possession which would redound to the benefit of the co-owners. Since petitioner recognized the existence of a co-ownership, he, as a co-owner, can bring the action without the necessity of joining all the other co-owners as co-plaintiffs.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISES AND ARBITRATIONS; AN AMICABLE SETTLEMENT MAY BE RESCINDED FOR NON-COMPLIANCE THERETO.— In *Chavez v. Court of Appeals*, we explained the nature of the amicable settlement reached after a *barangay* conciliation x x x. While the amicable settlement executed between Maximo and respondent Margie before the *Barangay* had the force and effect of a final judgment of a court, it appears that there was non-compliance thereto by respondent Margie on behalf of her parents which may be construed as repudiation. The settlement is considered rescinded in accordance with the provision of Article 2041 of the Civil Code. Since the settlement was rescinded, petitioner, as a co-owner, properly instituted the action for ejectment to recover possession of the subject lot against respondents who are in possession of the same.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE REAL PARTY-IN-INTEREST AS PARTY-DEFENDANT IS THAT PERSON WHO IS IN POSSESSION OF THE PROPERTY WITHOUT THE BENEFIT OF A CONTRACT OF LEASE AND ONLY UPON THE TOLERANCE OF ITS OWNER.— In ejectment cases, the only issue to be resolved is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants. In an action for unlawful detainer, the real party-in-interest as party-defendant is the person who is in possession of the property without the benefit of any contract of lease and only upon the tolerance and generosity of its owner. Well settled is the rule that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is bound by an implied promise that he will vacate the same upon demand, failing which a summary action for ejectment is the proper

remedy against him. His status is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner.

APPEARANCES OF COUNSEL

Villa & Partners for petitioner.
Jalbuna Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* is the Decision[2] dated February 28, 2007 of the Court of Appeals (*CA*) in CA-G.R. SP No. 00939, as well as its Resolution[3] dated July 11, 2007 which denied petitioner's motion for reconsideration.

On February 12, 2003, petitioner Rey Castigador Catedrilla filed with the Municipal Trial Court (*MTC*) of Lambunao, Iloilo a Complaint[4] for ejectment against the spouses Mario and Margie Lauron alleging as follows: that Lorenza Lizada is the owner of a parcel of land known as Lot 183, located in Mabini Street, Lambunao, Iloilo, which was declared for taxation purposes in her name under Tax Declaration No. 0363;[5] that on February 13, 1972, Lorenza died and was succeeded to her properties by her sole heir Jesusa Lizada Losañes, who was married to Hilarion Castigador (*Castigador*); that the spouses Jesusa and Hilarion Castigador had a number of children, which included Lilia Castigador (*Lilia*), who was married to Maximo Catedrilla (*Maximo*); that after the death of the spouses Castigador, their heirs agreed among themselves to subdivide Lot 183 and, pursuant

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[2] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Antonio L. Villamor and Stephen C. Cruz, concurring; *rollo*, pp. 22-32.

[3] *Id.* at 21.

[4] Docketed as Civil Case No. 516, records, pp. 5-8.

[5] *Rollo*, p. 158.

to a consolidation subdivision plan[6] dated January 21, 1984, the parcel of lot denominated as Lot No. 5 therein was to be apportioned to the heirs of Lilia since the latter already died on April 9, 1976; Lilia was succeeded by her heirs, her husband Maximo and their children, one of whom is herein petitioner; that petitioner filed the complaint as a co-owner of Lot No. 5; that sometime in 1980, respondents Mario and Margie Lauron, through the tolerance of the heirs of Lilia, constructed a residential building of strong materials on the northwest portion of Lot No. 5 covering an area of one hundred square meters; that the heirs of Lilia made various demands for respondents to vacate the premises and even exerted earnest efforts to compromise with them but the same was unavailing; and that petitioner reiterated the demand on respondents to vacate the subject lot on January 15, 2003, but respondents continued to unlawfully withhold such possession.

In their Answer,[7] respondents claimed that petitioner had no cause of action against them, since they are not the owners of the residential building standing on petitioner's lot, but Mildred Kascher (*Mildred*), sister of respondent Margie, as shown by the tax declaration in Mildred's name;[8] that in 1992, Mildred had already paid ₱10,000.00 as downpayment for the subject lot to Teresito Castigador;[9] that there were several instances that the heirs of Lilia offered the subject Lot 183 for sale to respondents and Mildred and demanded payment, however, the latter was only interested in asking money without any intention of delivering or registering the subject lot; that in 1998, Maximo, petitioner's father, and respondent Margie entered into an amicable settlement[10] before the *Barangay Lupon* of Poblacion Ilawod, Lambunao, Iloilo wherein Maximo offered the subject lot to the spouses Alfons and Mildred Kascher in the amount of ₱90,000.00 with the agreement that all documents

[6] *Id.* at 157.

[7] *Id.* at 27-30.

[8] *Id.* at 77.

[9] *Id.* at 93.

[10] *Id.* at 94.

related to the transfer of the subject lot to Maximo and his children be prepared by Maximo, but the latter failed to comply; and that the amicable settlement should have the force and effect of a final judgment of a court, hence, the instant suit is barred by prior judgment. Respondents counterclaimed for damages.

On November 14, 2003, the MTC rendered its Decision,[11] the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff ordering the defendants:
>
> 1. To vacate the lot in question and restore possession to the plaintiff;
>
> 2. To pay plaintiff in the reduced amount of TWENTY THOUSAND PESOS (₱20,000.00) as Atty's fees, plus ONE THOUSAND (₱1,000.00) per Court appearance;
>
> 3. To pay plaintiff reasonable compensation for the use of the lot in question ONE THOUSAND (₱1,000.00) pesos yearly counted from the date of demand;
>
> 4. To pay the cost of litigation.
>
> No award of moral and exemplary damages.
>
> Defendants' counterclaim is hereby dismissed for lack of sufficient evidence.[12]

The MTC found that from the allegations and evidence presented, it appeared that petitioner is one of the heirs of Lilia Castigador Catedrilla, the owner of the subject lot and that respondents are occupying the subject lot; that petitioner is a party who may bring the suit in accordance with Article 487[13] of the Civil Code; and as a co-owner, petitioner is allowed to bring this action for ejectment under Section 1, Rule 70[14] of

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[11] Per Judge Augusto L. Nobleza; *rollo*, pp. 137-142.

[12] *Id.* at 142. (Citations omitted)

[13] Art. 487. Anyone of the co-owners may bring an action in ejectment.

[14] Rule 70. *Forcible Entry and Unlawful Detainer*

the Rules of Court; that respondents are also the proper party to be sued as they are the occupants of the subject lot which they do not own; and that the MTC assumed that the house standing on the subject lot has been standing thereon even before 1992 and only upon the acquiescence of the petitioner and his predecessor-in-interest.

The MTC found that respondents would like to focus their defense on the ground that Mildred is an indispensable party, because she is the owner of the residential building on the subject lot and that there was already a perfected contract to sell between Mildred and Maximo because of an amicable settlement executed before the *Office of the Punong Barangay*. However, the MTC, without dealing on the validity of the document and its interpretation, ruled that it was clear that respondent Margie was representing her parents, Mr. and Mrs. Bienvenido Loraña, in the dispute presented with the *Punong Barangay*. It also found that even Mildred's letter to petitioner's father Maximo recognized the title of petitioner's father over the subject lot and that it had not been established by respondents if Teresito Castigador, the person who signed the receipt evidencing Mildred's downpayment of ₱10,000.00 for the subject lot, is also one of the heirs of Lilia. The MTC concluded that respondents could not be allowed to deflect the consequences of their continued stay over the property, because it was their very occupation of the property which is the object of petitioner's complaint; that in an action for ejectment, the subject matter

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Section 1. Who may institute proceedings, and when. – Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

is material possession or possession *de facto* over the real property, and the side issue of ownership over the subject lot is tackled here only for the purpose of determining who has the better right of possession which is to prove the nature of possession; that possession of Lot 183 should be relinquished by respondents to petitioner, who is a co-owner, without foreclosing other remedies that may be availed upon by Mildred in the furtherance of her supposed rights.

Respondents filed their appeal with the Regional Trial Court (RTC) of Iloilo City, raffled off to Branch 26. On March 22, 2005, the RTC rendered its Order,[15] the dispositive portion of which reads:

> WHEREFORE, circumstances herein-above considered, the decision of the court dated November 14, 2003 is hereby AFFIRMED, except for the payment of ₱20,000.00 as attorney's fees.
>
> SO ORDERED.[16]

The RTC found that petitioner, being one of the co-owners of the subject lot, is the proper party in interest to prosecute against any intruder thereon. It found that the amicable settlement signed and executed by the representatives of the registered owner of the premises before the *Lupon* is not binding and unenforceable between the parties. It further ruled that even if Mildred has her name in the tax declaration signifying that she is the owner of the house constructed on the subject lot, tax declarations are not evidence of ownership but merely issued to the declarant for purposes of payment of taxes; that she cannot be considered as an indispensable party in a suit for recovery of possession against respondents; that Mildred should have intervened and proved that she is an indispensable party because the records showed that she was not in actual possession of the subject lot. The RTC deleted the attorney's fees, since the MTC decision merely ordered the payment of attorney's fees without any basis.

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[15] Per Judge Antonio M. Natino, *rollo*, pp. 65-75.

[16] *Id.* at 75.

Respondents' motion for reconsideration was denied in an Order[17]dated June 8, 2005.

Dissatisfied, respondents filed with the CA a petition for review. Petitioner filed his Comment thereto.

On February 28, 2007, the CA issued its assailed decision, the dispositive portion of which reads:

> **IN LIGHT OF ALL THE FOREGOING**, this petition for review is **GRANTED**. The assailed decision of the Regional Trial Court, Br. 26, Iloilo City, dated March 22, 2005, that affirmed the MTC Decision dated November 14, 2003, is **REVERSED** and **SET ASIDE**.
>
> Consequently, the complaint for ejectment of the respondent is DISMISSED.[18]

The CA found that only petitioner filed the case for ejectment against respondents and ruled that the other heirs should have been impleaded as plaintiffs citing Section 1,[19] Rule 7 and Section 7,[20] Rule 3 of the Rules of Court; that the presence of all indispensable parties is a condition *sine qua non* for the exercise of judicial power; that when an indispensable party is not before the court, the action should be dismissed as without the presence of all the other heirs as plaintiffs, the trial court could not validly render judgment and grant relief in favor of the respondents.

The CA also ruled that while petitioner asserted that the proper parties to be sued are the respondents as they are the

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[17] *Id.* at 76.

[18] *Id.* at 31.

[19] Section 1. *Caption*. – The caption sets forth the name of the court, the title of the action, and the docket number if assigned.

The title of the action indicates the names of the parties. They shall all be named in the original complaint or petition; but in subsequent pleadings, it shall be sufficient if the name of the first party on each side be stated with an appropriate indication when there are other parties.

Their respective participation in the case shall be indicated.

[20] Section 7. *Compulsory joinder of indispensable parties*. – Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

actual possessors of the subject lot and not Mildred, petitioner still cannot disclaim knowledge that it was to Mildred to whom his co-owners offered the property for sale, thus, he knew all along that the real owner of the house on the subject lot is Mildred and not respondents; that Mildred even paid ₱10,000.00 out of the total consideration for the subject lot and required respondents' relatives to secure the documents that proved their ownership over the subject lot; that Maximo and Mildred had previously settled the matter regarding the sale of the subject lot before the *Barangay* as contained in an amicable settlement signed by Maximo and respondent Margie. Thus, the question in this case extends to mere possessory rights and non-inclusion of indispensable parties made the complaint fatally defective. From the facts obtaining in this case, ejectment being a summary remedy is not the appropriate action to file against the alleged deforciant of the property.

Hence, this petition for review wherein petitioner raises the following issues:

I

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT THE DECISION OF THE TRIAL COURT WAS A NULLITY .

II

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT PETITIONER KNEW ALL ALONG THAT MILDRED KASCHER, AND NOT RESPONDENTS, WERE THE REAL OWNERS OF THE RESIDENTIAL BUILDING.[21]

The CA found that petitioner's co-heirs to the subject lot should have been impleaded as co-plaintiffs in the ejectment case against respondents, since without their presence, the trial court could not validly render judgment and grant relief in favor of petitioner.

We do not concur.

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[21] *Rollo*, p. 10.

Petitioner can file the action for ejectment without impleading his co-owners. In *Wee v. De Castro*,[22] wherein petitioner therein argued that the respondent cannot maintain an action for ejectment against him, without joining all his co-owners, we ruled in this wise:

Article 487 of the New Civil Code is explicit on this point:

ART. 487. *Any one of the co-owners may bring an action in ejectment.*

This article covers all kinds of action for the recovery of possession, *i.e.*, forcible entry and unlawful detainer *(accion interdictal)*, recovery of possession *(accion publiciana)*, and recovery of ownership *(accion de reivindicacion)*. As explained by the renowned civilest, Professor Arturo M. Tolentino:

> **A co-owner may bring such an action, without the necessity of joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all**. If the action is for the benefit of the plaintiff alone, such that he claims possession for himself and not for the co-ownership, the action will not prosper.

In the more recent case of *Carandang v. Heirs of De Guzman*, this Court declared that a co-owner is not even a necessary party to an action for ejectment, for complete relief can be afforded even in his absence, thus:

> In sum, in suits to recover properties, all co-owners are real parties in interest. However, pursuant to Article 487 of the Civil Code and the relevant jurisprudence, any one of them may bring an action, any kind of action for the recovery of co-owned properties. Therefore, only one of the co-owners, namely the co-owner who filed the suit for the recovery of the co-owned property, is an indispensable party thereto. The other co-owners are not indispensable parties. They are not even necessary parties, for a complete relief can be afforded in the suit even without their participation, since the suit is presumed to have been filed for the benefit of all co-owners.[23]

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[22] G.R. No. 176405, August 20, 2008, 562 SCRA 695.

[23] *Id.* at 710-711.

In this case, although petitioner alone filed the complaint for unlawful detainer, he stated in the complaint that he is one of the heirs of the late Lilia Castigador, his mother, who inherited the subject lot, from her parents. Petitioner did not claim exclusive ownership of the subject lot, but he filed the complaint for the purpose of recovering its possession which would redound to the benefit of the co-owners. Since petitioner recognized the existence of a co-ownership, he, as a co-owner, can bring the action without the necessity of joining all the other co-owners as co-plaintiffs.

Petitioner contends that the CA committed a reversible error in finding that Mildred Kascher is an indispensable party and that her non-inclusion as a party defendant in the ejectment case made the complaint fatally defective, thus, must be dismissed.

We agree with petitioner.

The CA based its findings that Mildred is an indispensable party because it found that petitioner knew all along that Mildred is the owner of the house constructed on the subject lot as shown in the affidavits[24] of Maximo and petitioner stating that petitioner's co-owners had offered for sale the subject lot to Mildred, and that Maximo, petitioner's father, and Mildred had previously settled before the *Barangay* the matter regarding the sale of the subject lot to the latter as contained in the amicable settlement.

We find that the affidavits of Maximo and petitioner merely stated that the lot was offered for sale to Mildred, but nowhere did it admit that Mildred is the owner of the house constructed on the subject lot.

Also, it appears that the amicable settlement[25] before the *Barangay* wherein it was stated that Maximo will sell the subject

[24] *Rollo*, pp. 160-161; 168-169, respectively.

8. My family offered the lot being occupied now by the Laurons for sale to them and more particularly to her sister, Mildred Kascher, however, negotiations for the sale failed. (*Rollo*, p. 161)

[25] *Id.* at 94.

lot to the spouses Alfons and Mildred Kascher was signed by Maximo on behalf of his children and respondent Margie on behalf of Mr. and Mrs. Bienvenido Loraña. Thus, there is no basis for the CA's conclusion that it was Mildred and Maximo who had previously settled the sale of the subject lot.

Moreover, it appears however, that while there was a settlement, Liah C. Catedrilla, one of petitioner's co-heirs, wrote a letter[26] dated October 30, 2002, to the Spouses Loraña and respondent Margie stating that the latter had made a change on the purchase price for the subject lot which was different from that agreed upon in the amicable settlement. Records neither show that respondent Margie had taken steps to meet with Liah or any of her co-heirs to settle the matter of the purchase price nor rebut such allegation in the letter if it was not true. The letter[27] dated July 5, 2003 of respondent Margie's counsel addressed to petitioner's counsel, stating that his client is amenable in the amount as proposed in the amicable settlement, would not alter the fact of respondents' non-compliance with the settlement since the letter was sent after the ejectment case had already been filed by petitioner.

We, complainants and respondents in the above-captioned case, do hereby agree to settle our dispute as follows:

1. The complainant/owner, Mr. Maximo Catedrilla, in behalf of his children agree to sell Lot. No. 54 to spouses Alfons and Mildred Kascher in the amount of ₱90,000.00.

2. The buyer agrees to buy at the price stated, payment will be made at the time the documents showing his ownership and the Deed of Sale shall have been finished.

3. In case the owner fails to gather the necessary documents pertaining to his ownership on time, he has the option to extend the time of execution of the Deed of Sale until such time that the documents have been completed.

4. In case the buyer fails to pay the amount at the time that the Deed of Sale is ready for execution they will lose their right to purchase and the owner shall give a warning to remove all the improvements they have made on the said lot.

5. Date of execution of the Deed of Sale shall be on September 30, 1998.

[26] *Rollo*, p. 97.

[27] *Id.* at 96.

In *Chavez v. Court of Appeals*,[28] we explained the nature of the amicable settlement reached after a *barangay* conciliation, thus:

Indeed, the *Revised Katarungang Pambarangay Law* provides that an amicable settlement reached after *barangay* conciliation proceedings has the force and effect of a final judgment of a court if not repudiated or a petition to nullify the same is filed before the proper city or municipal court within ten (10) days from its date. It further provides that the settlement may be enforced by execution by *the lupong tagapamayapa* within six (6) months from its date, or by action in the appropriate city or municipal court, if beyond the six-month period. This special provision follows the general precept enunciated in Article 2037 of the Civil Code, *viz*.:

A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

Thus, we have held that a compromise agreement which is not contrary to law, public order, public policy, morals or good customs is a valid contract which is the law between the parties themselves. It has upon them the effect and authority of *res judicata* even if not judicially approved, and cannot be lightly set aside or disturbed except for vices of consent and forgery.

However, in *Heirs of Zari, et al. v. Santos*, we clarified that the broad precept enunciated in Art. 2037 is qualified by Art. 2041 of the same Code, which provides:

> If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand.

We explained, *viz*.:

> [B]efore the onset of the new Civil Code, there was no right to rescind compromise agreements. Where a party violated the terms of a compromise agreement, the only recourse open to the other party was to enforce the terms thereof.
>
> When the new Civil Code came into being, its Article 2041 x x x created *for the first time* the right of rescission. That

[28] G.R. No. 159411, March 18, 2005, 453 SCRA 843.

> provision gives to the aggrieved party the right to "either enforce the compromise or regard it as rescinded and insist upon his original demand." *Article 2041 should obviously be deemed to qualify the broad precept enunciated in Article 2037 that "[a] compromise has upon the parties the effect and authority of res judicata*.
>
> In exercising the second option under Art. 2041, the aggrieved party may, if he chooses, bring the suit contemplated or involved in his original demand, as if there had never been any compromise agreement, without bringing an action for rescission. This is because he may regard the compromise as already rescinded by the breach thereof of the other party.[29]

While the amicable settlement executed between Maximo and respondent Margie before the *Barangay* had the force and effect of a final judgment of a court, it appears that there was non-compliance thereto by respondent Margie on behalf of her parents which may be construed as repudiation. The settlement is considered rescinded in accordance with the provision of Article 2041 of the Civil Code. Since the settlement was rescinded, petitioner, as a co-owner, properly instituted the action for ejectment to recover possession of the subject lot against respondents who are in possession of the same.

Even the receipt[30] signed by a certain Teresito Castigador, acknowledging having received from Mildred the amount of ₱10,000.00 as downpayment for the purchase of the subject lot, would not also prove respondents' allegation that there was already a perfected contract to sell the subject lot to Mildred, since the authority of Teresito to sell on behalf of the heirs of Lilia Castigador was not established.

In ejectment cases, the only issue to be resolved is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants.[31] In an action for unlawful detainer,

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[29] *Id.* at 849-851.

[30] *Rollo*, p. 93.

[31] *Lao v. Lao*, G.R. No. 149599, May 16, 2005, 458 SCRA 539, 546.

the real party-in-interest as party-defendant is the person who is in possession of the property without the benefit of any contract of lease and only upon the tolerance and generosity of its owner.[32] Well settled is the rule that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is bound by an implied promise that he will vacate the same upon demand, failing which a summary action for ejectment is the proper remedy against him.[33] His status is analogous to that of a lessee or tenant whose term of lease has expired but whose occupancy continued by tolerance of the owner.[34]

Here, records show that the subject lot is owned by petitioner's mother, and petitioner, being an heir and a co-owner, is entitled to the possession of the subject lot. On the other hand, respondent spouses are the occupants of the subject lot which they do not own. Respondents' possession of the subject lot was without any contract of lease as they failed to present any, thus lending credence to petitioner's claim that their stay in the subject lot is by mere tolerance of petitioner and his predecessors. It is indeed respondents spouses who are the real parties-in-interest who were correctly impleaded as defendants in the unlawful detainer case filed by petitioner.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Decision dated February 28, 2007 and the Resolution dated July 11, 2007 of the Court of Appeals are hereby **REVERSED** and **SET ASIDE.** The Order dated March 22, 2005 of the Regional Trial Court, Branch 26, Iloilo City, in Civil Case No. 04-27978, is hereby **REINSTATED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

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[32] *Id.* at 547.

[33] *Arambulo v. Gungab*, 508 Phil. 612, 621-622 (2005), citing *Boy v. Court of Appeals*, 471 Phil. 102, 114 (2004).

[34] *Lao v. Lao, supra* note 31, at 547.

THIRD DIVISION

[G.R. No. 198783. April 15, 2013]

ROYAL PLANT WORKERS UNION, *petitioner, vs.* **COCA-COLA BOTTLERS PHILIPPINES, INC.-CEBU PLANT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 43; THE PROPER REMEDY TO CHALLENGE THE DECISION OR AWARD OF A VOLUNTARY ARBITRATOR BEFORE THE COURT OF APPEALS.— The Court has already ruled in a number of cases that a decision or award of a voluntary arbitrator is appealable to the CA via a petition for review under Rule 43. The recent case of *Samahan Ng Mga Manggagawa Sa Hyatt (SAMASAH-NUWHRAIN) v. Hon. Voluntary Arbitrator Buenaventura C. Magsalin and Hotel Enterprises of the Philippines* reiterated the well-settled doctrine on this issue x x x.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; MANAGEMENT PREROGATIVE; MUST BE EXERCISED IN GOOD FAITH AND WITH DUE REGARD TO THE RIGHTS OF LABOR.— The Court has held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place, and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor. x x x Apparently, the decision to remove the chairs was done with good intentions as CCBPI wanted to avoid instances of operators sleeping on the job while in the performance of their duties and responsibilities and because of the fact that the chairs were not necessary considering that the operators constantly move about while working. In short, the removal of the chairs was designed to increase work efficiency. Hence, CCBPI's exercise of its management

prerogative was made in good faith without doing any harm to the workers' rights.

3. ID.; LABOR CODE; NOT VIOLATED IN CASE AT BAR.— The rights of the Union under any labor law were not violated. There is no law that requires employers to provide chairs for bottling operators. The CA correctly ruled that the Labor Code, specifically Article 132 thereof, only requires employers to provide seats for women. No similar requirement is mandated for men or male workers. It must be stressed that all concerned bottling operators in this case are men. There was no violation either of the Health, Safety and Social Welfare Benefit provisions under Book IV of the Labor Code of the Philippines. As shown in the foregoing, the removal of the chairs was compensated by the reduction of the working hours and increase in the rest period. The directive did not expose the bottling operators to safety and health hazards.

4. ID.; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; BENEFITS NOT PROVIDED THEREIN BUT PRESENTLY ENJOYED BY THE EMPLOYEES ARE PURELY VOLUNTARY AND THE CONTINUANCE THEREOF SHALL NOT BE UNDERSTOOD AS ESTABLISHING AN OBLIGATION ON THE PART OF THE MANAGEMENT; CASE AT BAR.— The CBA between the Union and CCBPI contains no provision whatsoever requiring the management to provide chairs for the operators in the production/manufacturing line while performing their duties and responsibilities. On the contrary, Section 2 of Article 1 of the CBA expressly provides x x x that benefits and/or privileges, not expressly given therein but which are presently being granted by the company and enjoyed by the employees, shall be considered as purely voluntary acts by the management and that the continuance of such benefits and/or privileges, no matter how long or how often, shall not be understood as establishing an obligation on the company's part. Since the matter of the chairs is not expressly stated in the CBA, it is understood that it was a purely voluntary act on the part of CCBPI and the long practice did not convert it into an obligation or a vested right in favor of the Union.

5. ID.; LABOR STANDARDS; WAGES; PROHIBITION AGAINST DIMINUTION OF BENEFITS; REFERS TO MONETARY BENEFITS OR PRIVILEGES GIVEN TO THE EMPLOYEE

WITH MONETARY EQUIVALENTS.— The operators' chairs cannot be considered as one of the employee benefits covered in Article 100 of the Labor Code. In the Court's view, the term "benefits" mentioned in the non-diminution rule refers to monetary benefits or privileges given to the employee with monetary equivalents. Such benefits or privileges form part of the employees' wage, salary or compensation making them enforceable obligations. This Court has already decided several cases regarding the non- diminution rule where the benefits or privileges involved in those cases mainly concern monetary considerations or privileges with monetary equivalents. Some of these cases are: *Eastern Telecommunication Phils., Inc. v. Eastern Telecoms Employees Union*, where the case involves the payment of 14th, 15th and 16th month bonuses; *Central Azucarera De Tarlac v. Central Azucarera De Tarlac Labor Union-NLU*, regarding the 13th month pay, legal/special holiday pay, night premium pay and vacation and sick leaves; *TSPIC Corp. v. TSPIC Employees Union*, regarding salary wage increases; and *American Wire and Cable Daily Employees Union vs. American Wire and Cable Company, Inc.*, involving service awards with cash incentives, premium pay, Christmas party with incidental benefits and promotional increase.

APPEARANCES OF COUNSEL

Armando M. Alforque for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

MENDOZA, *J.*:

Assailed in this petition is the May 24, 2011 Decision[1] and the September 2, 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 05200, *entitled Coca-Cola Bottlers*

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[1] *Rollo*, pp. 23-35 (Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles).

[2] *Id.* at 36-37.

Philippines, Inc.-Cebu Plant v. Royal Plant Workers Union, which nullified and set aside the June 11, 2010 Decision[3] of the Voluntary Arbitration Panel *(Arbitration Committee)* in a case involving the removal of chairs in the bottling plant of Coca-Cola Bottlers Philippines, Inc. *(CCBPI).*

The Factual and Procedural Antecedents

The factual and procedural antecedents have been accurately recited in the May 24, 2011 CA decision as follows:

> Petitioner Coca-Cola Bottlers Philippines, Inc. (CCBPI) is a domestic corporation engaged in the manufacture, sale and distribution of softdrink products. It has several bottling plants all over the country, one of which is located in Cebu City. Under the employ of each bottling plant are bottling operators. In the case of the plant in Cebu City, there are 20 bottling operators who work for its Bottling Line 1 while there are 12-14 bottling operators who man its Bottling Line 2. All of them are male and they are members of herein respondent Royal Plant Workers Union (ROPWU).
>
> The bottling operators work in two shifts. The first shift is from 8 a.m. to 5 p.m. and the second shift is from 5 p.m. up to the time production operations is finished. Thus, the second shift varies and may end beyond eight (8) hours. However, the bottling operators are compensated with overtime pay if the shift extends beyond eight (8) hours. For Bottling Line 1, 10 bottling operators work for each shift while 6 to 7 bottling operators work for each shift for Bottling Line 2.
>
> Each shift has rotations of work time and break time. Prior to September 2008, the rotation is this: after two and a half (2 ½) hours of work, the bottling operators are given a 30-minute break and this goes on until the shift ends. In September 2008 and up to the present, the rotation has changed and bottling operators are now given a 30-minute break after one and one half (1 ½) hours of work.
>
> In 1974, the bottling operators of then Bottling Line 2 were provided with chairs upon their request. In 1988, the bottling operators of then Bottling Line 1 followed suit and asked to be provided also with chairs. Their request was likewise granted. Sometime in September

[3] Voluntary Arbitration Panel Decision, *id.* at 227-238.

2008, the chairs provided for the operators were removed pursuant to a national directive of petitioner. This directive is in line with the "I Operate, I Maintain, I Clean" program of petitioner for bottling operators, wherein every bottling operator is given the responsibility to keep the machinery and equipment assigned to him clean and safe. The program reinforces the task of bottling operators to constantly move about in the performance of their duties and responsibilities.

With this task of moving constantly to check on the machinery and equipment assigned to him, a bottling operator does not need a chair anymore, hence, petitioner's directive to remove them. Furthermore, CCBPI rationalized that the removal of the chairs is implemented so that the bottling operators will avoid sleeping, thus, prevent injuries to their persons. As bottling operators are working with machines which consist of moving parts, it is imperative that they should not fall asleep as to do so would expose them to hazards and injuries. In addition, sleeping will hamper the efficient flow of operations as the bottling operators would be unable to perform their duties competently.

The bottling operators took issue with the removal of the chairs. Through the representation of herein respondent, they initiated the grievance machinery of the Collective Bargaining Agreement (CBA) in November 2008. Even after exhausting the remedies contained in the grievance machinery, the parties were still at a deadlock with petitioner still insisting on the removal of the chairs and respondent still against such measure. As such, respondent sent a Notice to Arbitrate, dated 16 July 2009, to petitioner stating its position to submit the issue on the removal of the chairs for arbitration. Nevertheless, before submitting to arbitration the issue, both parties availed of the conciliation/mediation proceedings before the National Conciliation and Mediation Board (NCMB) Regional Branch No. VII. They failed to arrive at an amicable settlement.

Thus, the process of arbitration continued and the parties appointed the chairperson and members of the Arbitration Committee as outlined in the CBA. Petitioner and respondent respectively appointed as members to the Arbitration Committee Mr. Raul A. Kapuno, Jr. and Mr. Luis Ruiz while they both chose Atty. Alice Morada as chairperson thereof. They then executed a Submission Agreement which was accepted by the Arbitration Committee on 01 October 2009. As contained in the Submission Agreement, the sole issue for arbitration is whether the removal of chairs of the operators assigned

at the production/manufacturing line while performing their duties and responsibilities is valid or not.

Both parties submitted their position papers and other subsequent pleadings in amplification of their respective stands. Petitioner argued that the removal of the chairs is valid as it is a legitimate exercise of management prerogative, it does not violate the Labor Code and it does not violate the CBA it contracted with respondent. On the other hand, respondent espoused the contrary view. It contended that the bottling operators have been performing their assigned duties satisfactorily with the presence of the chairs; the removal of the chairs constitutes a violation of the Occupational Health and Safety Standards, the policy of the State to assure the right of workers to just and humane conditions of work as stated in Article 3 of the Labor Code and the Global Workplace Rights Policy.

Ruling of the Arbtration Committee

On June 11, 2010, the Arbitration Committee rendered a decision in favor of the Royal Plant Workers Union *(the Union)* and against CCBPI, the dispositive portion of which reads, as follows:

> Wherefore, the undersigned rules in favor of ROPWU declaring that the removal of the operators chairs is not valid. CCBPI is hereby ordered to restore the same for the use of the operators as before their removal in 2008.[4]

The Arbitration Committee ruled, among others, that the use of chairs by the operators had been a company practice for 34 years in Bottling Line 2, from 1974 to 2008, and 20 years in Bottling Line 1, from 1988 to 2008; that the use of the chairs by the operators constituted a company practice favorable to the Union; that it ripened into a benefit after it had been enjoyed by it; that any benefit being enjoyed by the employees could not be reduced, diminished, discontinued, or eliminated by the employer in accordance with Article 100 of the Labor Code, which prohibited the diminution or elimination by the employer of the employees' benefit; and that jurisprudence had not laid down any rule requiring a specific minimum number of years

[4] *Id.* at 227-238.

before a benefit would constitute a voluntary company practice which could not be unilaterally withdrawn by the employer.

The Arbitration Committee further stated that, although the removal of the chairs was done in good faith, CCBPI failed to present evidence regarding instances of sleeping while on duty. There were no specific details as to the number of incidents of sleeping on duty, who were involved, when these incidents happened, and what actions were taken. There was no evidence either of any accident or injury in the many years that the bottling operators used chairs. To the Arbitration Committee, it was puzzling why it took 34 and 20 years for CCBPI to be so solicitous of the bottling operators' safety that it removed their chairs so that they would not fall asleep and injure themselves.

Finally, the Arbitration Committee was of the view that, contrary to CCBPI's position, line efficiency was the result of many factors and it could not be attributed solely to one such as the removal of the chairs.

Not contented with the Arbitration Committee's decision, CCBPI filed a petition for review under Rule 43 before the CA.

Ruling of the CA

On May 24, 2011, the CA rendered a contrasting decision which nullified and set aside the decision of the Arbitration Committee. The dispositive portion of the CA decision reads:

> WHEREFORE, premises considered, the petition is hereby GRANTED and the Decision, dated 11 June 2010, of the Arbitration Committee in AC389-VII-09-10-2009D is NULLIFIED and SET ASIDE. A new one is entered in its stead SUSTAINING the removal of the chairs of the bottling operators from the manufacturing/production line.[5]

The CA held, among others, that the removal of the chairs from the manufacturing/production lines by CCBPI is within the province of management prerogatives; that it was part of

[5] *Id.* at 23-35.

its inherent right to control and manage its enterprise effectively; and that since it was the employer's discretion to constantly develop measures or means to optimize the efficiency of its employees and to keep its machineries and equipment in the best of conditions, it was only appropriate that it should be given wide latitude in exercising it.

The CA stated that CCBPI complied with the conditions of a valid exercise of a management prerogative when it decided to remove the chairs used by the bottling operators in the manufacturing/production lines. The removal of the chairs was solely motivated by the best intentions for both the Union and CCBPI, in line with the "I Operate, I Maintain, I Clean" program for bottling operators, wherein every bottling operator was given the responsibility to keep the machinery and equipment assigned to him clean and safe. The program would reinforce the task of bottling operators to constantly move about in the performance of their duties and responsibilities. Without the chairs, the bottling operators could efficiently supervise these machineries' operations and maintenance. It would also be beneficial for them because the working time before the break in each rotation for each shift was substantially reduced from two and a half hours (2 ½) to one and a half hours (1 ½) before the 30-minute break. This scheme was clearly advantageous to the bottling operators as the number of resting periods was increased. CCBPI had the best intentions in removing the chairs because some bottling operators had the propensity to fall asleep while on the job and sleeping on the job ran the risk of injury exposure and removing them reduced the risk.

The CA added that the decision of CCBPI to remove the chairs was not done for the purpose of defeating or circumventing the rights of its employees under the special laws, the Collective Bargaining Agreement *(CBA)* or the general principles of justice and fair play. It opined that the principles of justice and fair play were not violated because, when the chairs were removed, there was a commensurate reduction of the working time for each rotation in each shift. The provision of chairs for the bottling operators was never part of the CBAs contracted between the Union and CCBPI. The chairs were not provided as a benefit

because such matter was dependent upon the exigencies of the work of the bottling operators. As such, CCBPI could withdraw this provision if it was not necessary in the exigencies of the work, if it was not contributing to the efficiency of the bottling operators or if it would expose them to some hazards. Lastly, the CA explained that the provision of chairs to the bottling operators cannot be covered by Article 100 of the Labor Code on elimination or diminution of benefits because the employee's benefits referred to therein mainly involved monetary considerations or privileges converted to their monetary equivalent.

Disgruntled with the adverse CA decision, the Union has come to this Court praying for its reversal on the following

GROUNDS

I

THAT WITH DUE RESPECT, THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT A PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT IS THE PROPER REMEDY OF CHALLENGING BEFORE SAID COURT THE DECISION OF THE VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS UNDER THE LABOR CODE.

II

THAT WITH DUE RESPECT, THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NULLIFYING AND SETTING ASIDE THE DECISION OF THE PANEL OF VOLUNTARY ARBITRATORS WHICH DECLARED AS NOT VALID THE REMOVAL OF THE CHAIRS OF THE OPERATORS IN THE MANUFACTURING AND/OR PRODUCTION LINE.

In advocacy of its positions, the Union argues that the proper remedy in challenging the decision of the Arbitration Committee before the CA is a petition for *certiorari* under Rule 65. The petition for review under Rule 43 resorted to by CCBPI should have been dismissed for being an improper remedy. The Union points out that the parties agreed to submit the unresolved grievance involving the removal of chairs to voluntary arbitration

pursuant to the provisions of Article V of the existing CBA. Hence, the assailed decision of the Arbitration Committee is a judgment or final order issued under the Labor Code of the Philippines. Section 2, Rule 43 of the 1997 Rules of Civil Procedure, expressly states that the said rule does not cover cases under the Labor Code of the Philippines. The judgments or final orders of the Voluntary Arbitrator or Panel of Voluntary Arbitrators are governed by the provisions of Articles 260, 261, 262, 262-A, and 262-B of the Labor Code of the Philippines.

On the substantive aspect, the Union argues that there is no connection between CCBPI's "I Operate, I Maintain, I Clean" program and the removal of the chairs because the implementation of the program was in 2006 and the removal of the chairs was done in 2008. The 30-minute break is part of an operator's working hours and does not make any difference. The frequency of the break period is not advantageous to the operators because it cannot compensate for the time they are made to stand throughout their working time. The bottling operators get tired and exhausted after their tour of duty even with chairs around. How much more if the chairs are removed?

The Union further claims that management prerogatives are not absolute but subject to certain limitations found in law, a collective bargaining agreement, or general principles of fair play and justice. The operators have been performing their assigned duties and responsibilities satisfactorily for thirty (30) years using chairs. There is no record of poor performance because the operators are sitting all the time. There is no single incident when the attention of an operator was called for failure to carry out his assigned tasks. CCBPI has not submitted any evidence to prove that the performance of the operators was poor before the removal of the chairs and that it has improved after the chairs were removed. The presence of chairs for more than 30 years made the operators awake and alert as they could relax from time to time. There are sanctions for those caught sleeping while on duty. Before the removal of the chairs, the efficiency of the operators was much better and there was no recorded accident. After the removal of the

chairs, the efficiency of the operators diminished considerably, resulting in the drastic decline of line efficiency.

Finally, the Union asserts that the removal of the chairs constitutes violation of the Occupational Health and Safety Standards, which provide that every company shall keep and maintain its workplace free from hazards that are likely to cause physical harm to the workers or damage to property. The removal of the chairs constitutes a violation of the State policy to assure the right of workers to a just and humane condition of work pursuant to Article 3 of the Labor Code and of CCBPI's Global Workplace Rights Policy. Hence, the unilateral withdrawal, elimination or removal of the chairs, which have been in existence for more than 30 years, constitutes a violation of existing practice.

The respondent's position

CCBPI reiterates the ruling of the CA that a petition for review under Rule 43 of the Rules of Court was the proper remedy to question the decision of the Arbitration Committee. It likewise echoes the ruling of the CA that the removal of the chairs was a legitimate exercise of management prerogative; that it was done not to harm the bottling operators but for the purpose of optimizing their efficiency and CCBPI's machineries and equipment; and that the exercise of its management prerogative was done in good faith and not for the purpose of circumventing the rights of the employees under the special laws, the CBA or the general principles of justice and fair play.

The Court's Ruling

The decision in this case rests on the resolution of two basic questions. *First,* is an appeal to the CA via a petition for review under Rule 43 of the 1997 Rules of Civil Procedure a proper remedy to question the decision of the Arbitration Committee? *Second*, was the removal of the bottling operators' chairs from CCBPI's production/manufacturing lines a valid exercise of a management prerogative?

The Court sustains the ruling of the CA on both issues.

Regarding the first issue, the Union insists that the CA erred in ruling that the recourse taken by CCBPI in appealing the decision of the Arbitration Committee was proper. It argues that the proper remedy in challenging the decision of the Voluntary Arbitrator before the CA is by filing a petition for *certiorari* under Rule 65 of the Rules of Court, not a petition for review under Rule 43.

CCBPI counters that the CA was correct in ruling that the recourse it took in appealing the decision of the Arbitration Committee to the CA via a petition for review under Rule 43 of the Rules of Court was proper and in conformity with the rules and prevailing jurisprudence.

A Petition for Review under Rule 43 is the proper remedy

CCBPI is correct. This procedural issue being debated upon is not novel. The Court has already ruled in a number of cases that a decision or award of a voluntary arbitrator is appealable to the CA via a petition for review under Rule 43. The recent case of *Samahan Ng Mga Manggagawa Sa Hyatt (SAMASAH-NUWHRAIN) v. Hon. Voluntary Arbitrator Buenaventura C. Magsalin and Hotel Enterprises of the Philippines*[6] reiterated the well-settled doctrine on this issue, to wit:

> In the case of *Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL v. Bacungan*,[7] we repeated the well-settled rule that a decision or award of a voluntary arbitrator is appealable to the CA via petition for review under Rule 43. We held that:
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> "The question on the proper recourse to assail a decision of a voluntary arbitrator has already been settled in *Luzon Development Bank v. Association of Luzon Development Bank*

[6] G.R. No. 164939, June 6, 2011, 650 SCRA 445, 454-456.

[7] G.R. No. 149050, March 25, 2009, 582 SCRA 369, 374-375, citing *Luzon Development Bank v. Association of Luzon Development Bank Employees*, 319 Phil. 262 (1995); *Alcantara, Jr. v. Court of Appeals*, 435 Phil. 395 (2002); and *Nippon Paint Employees Union-Olalia v. Court of Appeals*, G.R. No. 159010, November 19, 2004, 443 SCRA 286.

Employees, where the Court held that the decision or award of the voluntary arbitrator or panel of arbitrators should likewise be appealable to the Court of Appeals, in line with the procedure outlined in Revised Administrative Circular No. 1-95 (now embodied in Rule 43 of the 1997 Rules of Civil Procedure), just like those of the quasi-judicial agencies, boards and commissions enumerated therein, and consistent with the original purpose to provide a uniform procedure for the appellate review of adjudications of all quasi-judicial entities.

Subsequently, in *Alcantara, Jr. v. Court of Appeals*, and *Nippon Paint Employees Union-Olalia v. Court of Appeals*, the Court reiterated the aforequoted ruling. In *Alcantara*, the Court held that notwithstanding Section 2 of Rule 43, the ruling in *Luzon Development Bank* still stands. The Court explained, thus:

> 'The provisions may be new to the Rules of Court but it is far from being a new law. Section 2, Rules 42 of the 1997 Rules of Civil Procedure, as presently worded, is nothing more but a reiteration of the exception to the exclusive appellate jurisdiction of the Court of Appeals, as provided for in Section 9, Batas Pambansa Blg. 129, as amended by Republic Act No. 7902:
>
> (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 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.'

The Court took into account this exception in *Luzon Development Bank* but, nevertheless, held that the decisions of voluntary arbitrators issued pursuant to the Labor Code do not come within its ambit x x x."

Furthermore, Sections 1, 3 and 4, Rule 43 of the 1997 Rules of Civil Procedure, as amended, provide:

> "SECTION 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the x x x, and voluntary arbitrators authorized by law.
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> x x x x x x x x x
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> SEC. 3. Where to appeal. - An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner therein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.
>
> SEC. 4. Period of appeal. - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. x x x. (Emphasis supplied.)'

Hence, upon receipt on May 26, 2003 of the Voluntary Arbitrator's Resolution denying petitioner's motion for reconsideration, petitioner should have filed with the CA, within the fifteen (15)-day reglementary period, a petition for review, not a petition for *certiorari*.

On the second issue, the Union basically claims that the CCBPI's decision to unilaterally remove the operators' chairs from the production/manufacturing lines of its bottling plants is not valid because it violates some fundamental labor policies. According to the Union, such removal constitutes a violation of the 1) Occupational Health and Safety Standards which provide that every worker is entitled to be provided by the employer with appropriate seats, among others; 2) policy of the State to assure the right of workers to a just and humane condition of work as provided for in Article 3 of the Labor Code;[8] 3) Global

[8] **Article 3.** *Declaration of basic policy.* The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and

Workplace Rights Policy of CCBPI which provides for a safe and healthy workplace by maintaining a productive workplace and by minimizing the risk of accident, injury and exposure to health risks; and 4) diminution of benefits provided in Article 100 of the Labor Code.[9]

Opposing the Union's argument, CCBPI mainly contends that the removal of the subject chairs is a valid exercise of management prerogative. The management decision to remove the subject chairs was made in good faith and did not intend to defeat or circumvent the rights of the Union under the special laws, the CBA and the general principles of justice and fair play.

Again, the Court agrees with CCBPI on the matter.

A Valid Exercise of Management Prerogative

The Court has held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place, and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay-off of workers, and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor.[10]

In the present controversy, it cannot be denied that CCBPI removed the operators' chairs pursuant to a national directive and in line with its "I Operate, I Maintain, I Clean" program,

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employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

[9] **ART. 100.** Prohibition against elimination or diminution of benefits. – Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

[10] *Julie's Bakeshop v. Arnaiz,*, G.R. No. 173882, February 15, 2012, 666 SCRA 101, 115.

launched to enable the Union to perform their duties and responsibilities more efficiently. The chairs were not removed indiscriminately. They were carefully studied with due regard to the welfare of the members of the Union. The removal of the chairs was **compensated by**: **a)** a **reduction** of the **operating hours** of the bottling operators from a two-and-one-half (2 ½)-hour rotation period to a one-and-a-half (1 ½) hour rotation period; and **b)** an **increase** of the **break period** from 15 to 30 minutes between rotations.

Apparently, the decision to remove the chairs was done with good intentions as CCBPI wanted to avoid instances of operators sleeping on the job while in the performance of their duties and responsibilities and because of the fact that the chairs were not necessary considering that the operators constantly move about while working. In short, the removal of the chairs was designed to increase work efficiency. Hence, CCBPI's exercise of its management prerogative was made in good faith without doing any harm to the workers' rights.

The fact that there is no proof of any operator sleeping on the job is of no moment. There is no guarantee that such incident would never happen as sitting on a chair is relaxing. Besides, the operators constantly move about while doing their job. The ultimate purpose is to promote work efficiency.

No Violation of Labor Laws

The rights of the Union under any labor law were not violated. There is no law that requires employers to provide chairs for bottling operators. The CA correctly ruled that the Labor Code, specifically Article 132[11] thereof, only requires employers to provide seats for women. No similar requirement is mandated for men or male workers. It must be stressed that all concerned bottling operators in this case are men.

[11] Art. 132. *Facilities for Women*. The Secretary of Labor shall establish standards that will insure the safety and health of women employees. In appropriate cases, he shall by regulations, require employers to:

(a) Provide seats proper for women and permit them to use such seats when they are free from work and during working hours, provided they can perform their duties in this position without detriment to efficiency.

There was no violation either of the Health, Safety and Social Welfare Benefit provisions under Book IV of the Labor Code of the Philippines. As shown in the foregoing, the removal of the chairs was compensated by the reduction of the working hours and increase in the rest period. The directive did not expose the bottling operators to safety and health hazards.

The Union should not complain too much about standing and moving about for one and one-half (1 ½) hours because studies show that sitting in workplaces for a long time is hazardous to one's health. The report of VicHealth, Australia,[12] disclosed that "prolonged workplace sitting is an emerging public health and occupational health issue with serious implications for the health of our working population. Importantly, prolonged sitting is a risk factor for poor health and early death, even among those who meet, or exceed, national[13] activity guidelines." In another report,[14] it was written:

> Workers needing to spend long periods in a seated position on the job such as taxi drivers, call centre and office workers, are at risk for injury and a variety of adverse health effects.
>
> The most common injuries occur in the muscles, bones, tendons and ligaments, affecting the neck and lower back regions. Prolonged sitting:
>
> - reduces body movement making muscles more likely to pull, cramp or strain when stretched suddenly,
> - causes fatigue in the back and neck muscles by slowing the blood supply and puts high tension on the spine, especially in the low back or neck, and
> - causes a steady compression on the spinal discs that hinders their nutrition and can contribute to their premature degeneration.

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[12] http://www.vichealth.vic.gov.au/About-VicHealth.aspx. Last visited March 28, 2013.

[13] Australian.

[14] http://www.ohsrep.org.au/hazards/workplace-conditions/sedentary-work/index.cfm. Last visited March 28, 2013.

Sedentary employees may also face a gradual deterioration in health if they do not exercise or do not lead an otherwise physically active life. The most common health problems that these employees experience are disorders in blood circulation and injuries affecting their ability to move. Deep Vein Thrombosis (DVT), where a clot forms in a large vein after prolonged sitting (eg after a long flight) has also been shown to be a risk.

Workers who spend most of their working time seated may also experience other, less specific adverse health effects. Common effects include decreased fitness, reduced heart and lung efficiency, and digestive problems. Recent research has identified too much sitting as an important part of the physical activity and health equation, and suggests we should focus on the harm caused by daily inactivity such as prolonged sitting.

Associate professor David Dunstan leads a team at the Baker IDI in Melbourne which is specifically researching sitting and physical activity. He has found that people who spend long periods of time seated (more than four hours per day) were at risk of:

- higher blood levels of sugar and fats,
- larger waistlines, and
- higher risk of metabolic syndrome

regardless of how much moderate to vigorous exercise they had.

In addition, people who interrupted their sitting time more often just by **standing** or with light activities such as housework, shopping, and **moving about the office** had healthier blood sugar and fat levels, and smaller waistlines than those whose sitting time was not broken up.

Of course, in this case, if the chairs would be returned, no risks would be involved because of the shorter period of working time. The study was cited just to show that there is a health risk in prolonged sitting.

No Violation of the CBA

The CBA[15] between the Union and CCBPI contains no provision whatsoever requiring the management to provide chairs

[15] *Rollo*, pp. 127-148.

for the operators in the production/manufacturing line while performing their duties and responsibilities. On the contrary, Section 2 of Article 1 of the CBA expressly provides as follows:

Article I

SCOPE

SECTION 2. Scope of the Agreement. All the terms and conditions of employment of employees and workers within the appropriate bargaining unit (as defined in Section 1 hereof) are embodied in this Agreement and the same shall govern the relationship between the COMPANY and such employees and/or workers. **On the other hand, all such benefits and/or privileges as are not expressly provided for in this Agreement but which are now being accorded, may in the future be accorded, or might have previously been accorded, to the employees and/or workers, shall be deemed as purely voluntary acts on the part of the COMPANY in each case, and the continuance and repetition thereof now or in the future, no matter how long or how often, shall not be construed as establishing an obligation on the part of the COMPANY.** It is however understood that any benefits that are agreed upon by and between the COMPANY and the UNION in the Labor-Management Committee Meetings regarding the terms and conditions of employment outside the CBA that have general application to employees who are similarly situated in a Department or in the Plant shall be implemented. [emphasis and underscoring supplied]

As can be gleaned from the aforecited provision, the CBA expressly provides that benefits and/or privileges, not expressly given therein but which are presently being granted by the company and enjoyed by the employees, shall be considered as purely voluntary acts by the management and that the continuance of such benefits and/or privileges, no matter how long or how often, shall not be understood as establishing an obligation on the company's part. Since the matter of the chairs is not expressly stated in the CBA, it is understood that it was a purely voluntary act on the part of CCBPI and the long practice did not convert it into an obligation or a vested right in favor of the Union.

No Violation of the general principles of justice and fair play

The Court completely agrees with the CA ruling that the removal of the chairs did not violate the general principles of justice and fair play because the bottling operators' **working time** was considerably **reduced** from two and a half **(2 ½)** hours to just one and a half **(1 ½)** hours and the **break period**, when they could sit down, was **increased** to 30 minutes between rotations. The bottling operators' new work schedule is certainly advantageous to them because it greatly increases their rest period and significantly decreases their working time. A break time of thirty (30) minutes after working for only one and a half (1 ½) hours is a just and fair work schedule.

No Violation of Article 100 of the Labor Code

The operators' chairs cannot be considered as one of the employee benefits covered in Article 100[16] of the Labor Code. In the Court's view, the term "benefits" mentioned in the non-diminution rule refers to monetary benefits or privileges given to the employee with monetary equivalents. Such benefits or privileges form part of the employees' wage, salary or compensation making them enforceable obligations.

This Court has already decided several cases regarding the non-diminution rule where the benefits or privileges involved in those cases mainly concern monetary considerations or privileges with monetary equivalents. Some of these cases are: *Eastern Telecommunication Phils., Inc. v. Eastern Telecoms Employees Union,*[17] where the case involves the payment of 14th, 15th and 16th month bonuses; *Central Azucarera De Tarlac v. Central Azucarera De Tarlac Labor Union-NLU,*[18]

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[16] Art. 100. *Prohibition against elimination or diminution of benefits.* Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

[17] G.R. No. 185665, February 8, 2012, 665 SCRA 516.

[18] G.R. No. 188949, July 26, 2010, 625 SCRA 622.

regarding the 13th month pay, legal/special holiday pay, night premium pay and vacation and sick leaves; *TSPIC Corp. v. TSPIC Employees Union*, [19] regarding salary wage increases; and *American Wire and Cable Daily Employees Union vs. American Wire and Cable Company, Inc.*,[20] involving service awards with cash incentives, premium pay, Christmas party with incidental benefits and promotional increase.

In this regard, the Court agrees with the CA when it resolved the matter and wrote:

> Let it be stressed that the aforequoted article speaks of non-diminution of supplements and other employee benefits. Supplements are privileges given to an employee which constitute as extra remuneration besides his or her basic ordinary earnings and wages. From this definition, We can only deduce that the other employee benefits spoken of by Article 100 pertain only to those which are susceptible of monetary considerations. Indeed, this could only be the most plausible conclusion because the cases tackling Article 100 involve mainly with monetary considerations or privileges converted to their monetary equivalents.
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> x x x x x x x x x
>
> Without a doubt, equating the provision of chairs to the bottling operators as something within the ambit of "benefits" in the context of Article 100 of the Labor Code is unduly stretching the coverage of the law. The interpretations of Article 100 of the Labor Code do not show even with the slightest hint that such provision of chairs for the bottling operators may be sheltered under its mantle.[21]

Jurisprudence recognizes the exercise of management prerogatives. Labor laws also discourage interference with an employer's judgment in the conduct of its business. For this reason, the Court often declines to interfere in legitimate business decisions of employers. The law must protect not only the welfare of the employees, but also the right of the employers.[22]

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[19] G.R., 163419, February 13, 2008, 545 SCRA 215.

[20] 497 Phil. 213 (2005).

[21] *Rollo*, pp. 23-35.

[22] *Arnulfo O. Endico v. Quantum Foods Distribution Center*, G.R. No. 161615, January 30, 2009, 577 SCRA 299, 309.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 200173. April 15, 2013]

SPS. ESMERALDO D. VALLIDO and ARSENIA M. VALLIDO, rep. by ATTY. SERGIO C. SUMAYOD, *petitioners, vs.* **SPS. ELMER PONO and JULIET PONO, and PURIFICACION CERNA-PONO and SPS. MARIANITO PONO and ESPERANZA MERO-PONO,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; DOUBLE SALE; THE BURDEN OF PROVING GOOD FAITH LIES WITH THE SECOND BUYER WHICH IS NOT DISCHARGED BY SIMPLY INVOKING THE ORDINARY PRESUMPTION OF GOOD FAITH.— It is undisputed that there is a double sale and that the respondents are the first buyers while the petitioners are the second buyers. The burden of proving good faith lies with the second buyer (petitioners herein) which is not discharged by simply invoking the ordinary presumption of good faith. After an assiduous assessment of the evidentiary records, this Court holds that the petitioners are NOT buyers in good faith as they failed to discharge their burden of proof.

2. ID.; ID.; ID.; ID.; THE SECOND BUYER WHO HAS ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE PRIOR SALE CANNOT BE A REGISTRANT IN GOOD FAITH.— Notably, it is admitted that Martino is the grandfather of Esmeraldo. As an heir, petitioner Esmeraldo cannot be considered as a third party to the prior transaction between Martino and Purificacion.

In *Pilapil v. Court of Appeals*, it was written: "The purpose of the registration is to give notice to third persons. And, **privies are not third persons. The vendor's heirs are his privies. Against them, failure to register will not vitiate or annul the vendee's right of ownership conferred by such unregistered deed of sale.**" The non-registration of the deed of sale between Martino and Purificacion is immaterial as it is binding on the petitioners who are privies. Based on the privity between petitioner Esmeraldo and Martino, the petitioner as a second buyer is charged with constructive knowledge of prior dispositions or encumbrances affecting the subject property. The second buyer who has actual or constructive knowledge of the prior sale cannot be a registrant in good faith.

3. ID.; ID.; ID.; ID.; THE REGISTRATION OF A LATER SALE MUST BE DONE IN GOOD FAITH TO ENTITLE THE REGISTRANT TO PRIORITY IN OWNERSHIP OVER THE VENDEE IN AN EARLIER SALE.— [A]lthough it is a recognized principle that a person dealing on a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, it is expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants. As in the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard that a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would preclude him from claiming or invoking the rights of a "purchaser in good faith." It has been held that "the registration of a later sale must be done in good faith to entitle the registrant to priority in ownership over the vendee in an earlier sale."

4. ID.; ID.; ID.; ID.; WHERE THE VENDOR IS NOT IN POSSESSION OF THE PROPERTY, THE PROSPECTIVE VENDEES ARE OBLIGATED TO INVESTIGATE THE RIGHTS OF ONE IN

POSSESSION.— There are several indicia that should have placed the petitioners on guard and prompted them to investigate or inspect the property being sold to them. *First*, Martino, as seller, did not have possession of the subject property. *Second*, during the sale on July 4, 1990, Martino did not have the owner's duplicate copy of the title. *Third*, there were existing permanent improvements on the land. *Fourth*, the respondents were in actual possession of the land. These circumstances are too glaring to be overlooked and should have prompted the petitioners, as prospective buyers, to investigate or inspect the land. Where the vendor is not in possession of the property, the prospective vendees are obligated to investigate the rights of one in possession.

5. ID.; LAND REGISTRATION; INDEFEASIBILITY OF TORRENS TITLE; DOES NOT EXTEND TO TRANSFEREES WHO TAKE THE CERTIFICATE OF TITLE IN BAD FAITH.— As the petitioners cannot be considered buyers in good faith, they cannot lean on the indefeasibility of their TCT in view of the doctrine that the defense of indefeasibility of a torrens title does not extend to transferees who take the certificate of title in bad faith. The Court cannot ascribe good faith to those who have not shown any diligence in protecting their rights.

6. ID.; SPECIAL CONTRACTS; SALES; DOUBLE SALE; OWNERSHIP IN CASE AT BAR SHOULD VEST IN THE PARTIES WHO WERE FIRST IN POSSESSION OF THE PROPERTY IN GOOD FAITH.— [I]t is uncontroverted that the respondents were occupying the land since January 4, 1960 based on the deed of sale between Martino and Purificacion. They have also made improvements on the land by erecting a house of mixed permanent materials thereon, which was also admitted by the petitioners. The respondents, without a doubt, are possessors in good faith. Ownership should therefore vest in the respondents because they were first in possession of the property in good faith.

APPEARANCES OF COUNSEL

Sumayod & Associates Law and Notarial Offices for petitioners.

Edgardo Cordeño for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* assailing the December 8, 2011 Decision of the Court of Appeals *(CA)* which reversed and set aside the July 20, 2004 Decision of the Regional Trial Court, Branch 12, Ormoc City *(RTC)*, a case involving a double sale of a parcel of land.

It appears that Martino Dandan *(Martino)* was the registered owner of a parcel of land in Kananga, Leyte, with an area of 28,214 square meters, granted under Homestead Patent No. V-21513 on November 11, 1953 and covered by Original Certificate of Title *(OCT)* No. P-429.

On January 4, 1960, Martino, who was at that time living in Kananga, Leyte, sold a portion of the subject property equivalent to 18,214 square meters to respondent Purificacion Cerna *(Purificacion)*. Upon execution of the Deed of Absolute Sale, Martino gave Purificacion the owner's copy of OCT No. P-429. The transfer, however, was not recorded in the Registry of Deeds.

On May 4, 1973, Purificacion sold her18,214 square meter portion of the subject property to respondent Marianito Pono *(Marianito)* and also delivered OCT No. P-429 to him. Marianito registered the portion he bought for taxation purposes, paid its taxes, took possession, and allowed his son respondent Elmer Pono *(Elmer)* and daughter-in-law, Juliet Pono *(Juliet)*, to construct a house thereon. Marianito kept OCT No. P-429. The transfer, however, was also not recorded in the Registry of Deeds.

Meanwhile, Martino left Kananga, Leyte, and went to San Rafael III, Noveleta, Cavite, and re-settled there. On June 14, 1990, he sold the whole subject property to his grandson, petitioner Esmeraldo Vallido *(Esmeraldo)*, also a resident of Noveleta, Cavite. Considering that Martino had delivered OCT No. P-429 to Purificacion in 1960, he no longer had any certificate of title to hand over to Esmeraldo.

On May 7, 1997, Martino filed a petition seeking for the issuance of a new owner's duplicate copy of OCT No. P-429, which he claimed was lost. He stated that he could not recall having delivered the said owner's duplicate copy to anybody to secure payment or performance of any legal obligation. On June 8, 1998, the petition was granted by the RTC, Branch 12 of Ormoc City. On September 17, 1999, Esmeraldo registered the deed of sale in the Registry of Deeds and Transfer Certificate of Title *(TCT)* No. TP-13294 was thereafter issued in the name of the petitioners.

Subsequently, the petitioners filed before the RTC a complaint for quieting of title, recovery of possession of real property and damages against the respondents. In their Answer, respondents Elmer and Juliet averred that their occupation of the property was upon permission of Marianito. They included a historical chronology of the transactions from that between Martino and Purificacion to that between Purificacion and Marianito.

On July 20, 2004, the RTC promulgated a decision[1] favoring the petitioners. The RTC held that there was a double sale under Article 1544 of the Civil Code. The respondents were the first buyers while the petitioners were the second buyers. The RTC deemed the petitioners as buyers in good faith because during the sale on June 4, 1990, OCT No. P-429 was clean and free from all liens. The petitioners were also deemed registrants in good faith because at the time of the registration of the deed of sale, both OCT No. P-429 and TCT No. TP-13294 did not bear any annotation or mark of any lien or encumbrance. The RTC concluded that because the petitioners registered the sale in the Register of Deeds, they had a better right over the respondents.

Aggrieved, the respondents filed their Notice of Appeal on August 27, 2004.

In the assailed Decision,[2] dated December 8, 2011, the CA ruled in favor of the respondents. The CA agreed that there

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[1] *Rollo*, pp. 52-60, penned by Presiding Judge Francisco C. Gedorio, Jr.

[2] *Id.* at 61-70, penned by Associate Justice Victoria Isabel A. Paredes

was a double sale. It, however, held that the petitioners were neither buyers nor registrants in good faith. The respondents indisputably were occupying the subject land. It wrote that where the land sold was in the possession of a person other than the vendor, the purchaser must go beyond the certificate of title and make inquiries concerning the rights of the actual possessors. It further stated that mere registration of the sale was not enough as good faith must concur with the registration. Thus, it ruled that the petitioners failed to discharge the burden of proving that they were buyers and registrants in good faith. Accordingly, the CA concluded that because the sale to Purificacion took place in 1960, thirty (30) years prior to Esmeraldo's acquisition in 1990, the respondents had a better right to the property.

Hence, this petition.

The petitioners argue that the CA erred in ruling in favor of the respondents. Primarily, they contend that the Appellant's Brief was filed beyond the 30-day extension period granted by the CA and that the findings of fact of the RTC were no longer subject to review and should not have been disturbed on appeal.

They invoke that they are buyers and registrants in good faith. They claim that the title of the land was clean and free from any and all liens and encumbrances from the time of the sale up to the time of its registration. They also aver that they had no knowledge of the sale between Martino and Purificacion on July 4, 1960 as they have been residents of Noveleta, Cavite, which is very far from Brgy. Masarayao, Kananga, Leyte. When Esmeraldo confronted his grandfather, Martino, about the July 4, 1960 sale to Purificacion, he took as gospel truth the vehement denial of his grandfather on the existence of the sale. The latter explained that the transaction was only a mortgage. These facts show that indeed they were buyers and registrants in good faith. Thus, their right of ownership is preferred against the unregistered claim of the respondents.

The petition is without merit.

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and concurred in by Associate Justices Edgardo L. Delos Santos and Ramon Paul L. Hernando of the Nineteenth Division, Cebu City.

On the procedural aspect, it was the ruling of the CA that the respondents were deemed to have filed their Appellant's Brief within the reglementary period.[3] The Court accepts that as it was merely a technical issue.

The core issue in this case is whether the petitioners are buyers and registrants in good faith.

It is undisputed that there is a double sale and that the respondents are the first buyers while the petitioners are the second buyers. The burden of proving good faith lies with the second buyer (petitioners herein) which is not discharged by simply invoking the ordinary presumption of good faith.[4]

After an assiduous assessment of the evidentiary records, this Court holds that the petitioners are NOT buyers in good faith as they failed to discharge their burden of proof.

Notably, it is admitted that Martino is the grandfather of Esmeraldo. As an heir, petitioner Esmeraldo cannot be considered as a third party to the prior transaction between Martino and Purificacion. In *Pilapil v. Court of Appeals*,[5] it was written:

> The purpose of the registration is to give notice to third persons. And, **privies are not third persons. The vendor's heirs are his privies. Against them, failure to register will not vitiate or annul the vendee's right of ownership conferred by such unregistered deed of sale.**

The non-registration of the deed of sale between Martino and Purificacion is immaterial as it is binding on the petitioners who are privies.[6] Based on the privity between petitioner Esmeraldo and Martino, the petitioner as a second buyer is charged with constructive knowledge of prior dispositions or encumbrances affecting the subject property. The second buyer who has actual or constructive knowledge of the prior sale cannot be a registrant in good faith.[7]

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[3] *Id.* at 305-306.

[4] *Spouses Rayos v. Reyes*, 446 Phil. 32, 50-51 (2003).

[5] 321 Phil. 156, 166 (1995).

[6] *Rollo*, p. 63.

[7] *Spouses Limon v. Spouses Borras*, 452 Phil. 178, 207 (2003).

Moreover, although it is a recognized principle that a person dealing on a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, it is expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants. As in the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard that a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would preclude him from claiming or invoking the rights of a "purchaser in good faith."[8] It has been held that "the registration of a later sale must be done in good faith to entitle the registrant to priority in ownership over the vendee in an earlier sale."[9]

There are several indicia that should have placed the petitioners on guard and prompted them to investigate or inspect the property being sold to them. *First,* Martino, as seller, did not have possession of the subject property. *Second,* during the sale on July 4, 1990, Martino did not have the owner's duplicate copy of the title. *Third,* there were existing permanent improvements on the land. *Fourth,* the respondents were in actual possession of the land. These circumstances are too glaring to be overlooked and should have prompted the petitioners, as prospective buyers, to investigate or inspect the land. Where the vendor is not in possession of the property, the prospective vendees are obligated to investigate the rights of one in possession.[10]

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[8] *PNB v. Militar,* G.R. No. 164801, June 30, 2006, 494 SCRA 308, 315.

[9] *Uraca v. Court of Appeals,* 344 Phil. 253, 265.

[10] *Orduna v. Fuentebella, et al.,* G.R. No. 176841, June 29, 2013.

When confronted by Esmeraldo on the alleged previous sale, Martino declared that there was no sale but only a mortgage. The petitioners took the declaration of Martino as gospel truth or *ex cathedra*.[11] The petitioners are not convincing. Glaringly, Martino gave conflicting statements. He stated in his Petition for Issuance of New Owner's Duplicate Copy of OTC[12] that he could not recall having delivered the owner's duplicate copy to anybody to *secure payment or performance of any obligation*. Yet, when confronted by Esmeraldo, Martino stated that he mortgaged the land with Purificacion. The claims of Martino, as relayed by the petitioners, cannot be relied upon.

As the petitioners cannot be considered buyers in good faith, they cannot lean on the indefeasibility of their TCT in view of the doctrine that the defense of indefeasibility of a torrens title does not extend to transferees who take the certificate of title in bad faith.[13] The Court cannot ascribe good faith to those who have not shown any diligence in protecting their rights.[14]

Lastly, it is uncontroverted that the respondents were occupying the land since January 4, 1960 based on the deed of sale between Martino and Purificacion. They have also made improvements on the land by erecting a house of mixed permanent materials thereon, which was also admitted by the petitioners.[15] The respondents, without a doubt, are possessors in good faith. Ownership should therefore vest in the respondents because they were first in possession of the property in good faith.[16]

WHEREFORE, the petition is **DENIED**.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Leonen, JJ.,* concur.

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[11] *Rollo,* p. 45.

[12] *Id.* at 278.

[13] *Baricuatro, Jr. v. Court of Appeals,* 382 Phil. 15, 34 (2000).

[14] *Rufloe v. Burgos*, G.R. No. 143573, January 30, 2009, 577 SCRA 264, 275.

[15] *Rollo,* p. 23.

[16] *Bergado v. CA*, 255 Phil. 477, 486 (1989).

EN BANC

[G.R. No. 191805. April 16, 2013]

IN THE MATTER OF THE PETITION FOR THE WRIT OF *AMPARO* AND *HABEAS DATA* IN FAVOR OF NORIEL RODRIGUEZ,

NORIEL RODRIGUEZ, *petitioner, vs.* **GLORIA MACAPAGAL-ARROYO, GEN. VICTOR S. IBRADO, PDG JESUS AME VERSOZA, LT. GEN. DELFIN BANGIT, MAJ. GEN. NESTOR Z. OCHOA, P/CSUPT. AMETO G. TOLENTINO, P/SSUPT. JUDE W. SANTOS, COL. REMIGIO M. DE VERA, an officer named MATUTINA, LT. COL. MINA, CALOG, GEORGE PALACPAC under the name "HARRY," ANTONIO CRUZ, ALDWIN "BONG" PASICOLAN and VICENTE CALLAGAN,** *respondents.*

[G.R. No. 193160. April 16, 2013]

IN THE MATTER OF THE PETITION FOR THE WRIT OF *AMPARO* AND *HABEAS DATA* IN FAVOR OF NORIEL RODRIGUEZ,

POLICE DIR. GEN. JESUS A. VERSOZA, P/SSUPT. JUDE W. SANTOS, BGEN. REMEGIO M. DE VERA, 1ST LT. RYAN S. MATUTINA, LT. COL. LAURENCE E. MINA, ANTONIO C. CRUZ, ALDWIN C. PASICOLAN and VICENTE A. CALLAGAN, *petitioners, vs.* **NORIEL H. RODRIGUEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULE ON THE WRIT OF *AMPARO*; WRIT OF *AMPARO*; PARTAKES OF A SUMMARY PROCEEDING THAT REQUIRES SUBSTANTIAL EVIDENCE AND THE APPLICATION OF THE TOTALITY RULE AS A STANDARD

FOR THE GRANT OF THE WRIT.— The writ of *amparo* partakes of a summary proceeding that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner. As explained in the Decision, it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or even administrative responsibility requiring substantial evidence. The totality of evidence as a standard for the grant of the writ was correctly applied by this Court, as first laid down in *Razon v. Tagitis*: "The fair and proper rule, to our mind, is to ***consider all the pieces of evidence adduced in their totality***, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, ***we reduce our rules to the most basic test of reason*** – *i.e.*, to the ***relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence.*** Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test."

2. ID.; ID.; APPLIES TO VIOLATION OF THE RIGHT TO PRIVACY AND SECURITY OF ABODE; CASE AT BAR.— Respondents conveniently neglect to address the findings of both the CA and this Court that aside from the abduction of Rodriguez, respondents, specifically 1st Lt. Matutina, had violated and threatened the former's right to security when they made a visual recording of his house, as well as the photos of his relatives. The CA found that the soldiers even went as far as taking videos of the photos of petitioner's relatives hung on the wall of the house, and the innermost portions of the house. There is no reasonable justification for this violation of the right to privacy and security of petitioner's abode, which strikes at the very heart and rationale of the Rule on the Writ of *Amparo*.

3. ID.; ID.; APPLIES TO VIOLATION OF THE RIGHTS TO LIFE, LIBERTY, AND SECURITY FOR FAILURE TO CONDUCT A FAIR AND EFFECTIVE INVESTIGATION OF THE ENFORCED DISAPPEARANCE.— [R]espondents also neglect to address our ruling that *the failure to conduct a fair and effective investigation similarly amounted to a violation of, or threat to Rodriguez's rights to life, liberty, and security.* The writ's curative role is an acknowledgment that the violation of the right to life, liberty, and security may be caused not only

by a public official's act, but also by his omission. Accountability may attach to respondents who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or *those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance. The duty to investigate must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.

APPEARANCES OF COUNSEL

Rex J.M.A. Fernandez for Noriel Rodriguez.
Angelito W. Chua Law Office for Gen. Victor S. Ibrado and Lt. Gen. Delfin Bangit.

R E S O L U T I O N

SERENO, *C.J.*:

On 15 November 2011, the Court promulgated its Decision in the present case, the dispositive portion of which reads:

WHEREFORE, we resolve to GRANT the Petition for Partial Review in G.R. No. 191805 and DENY the Petition for Review in G.R. No. 193160. The Decision of the Court of Appeals is hereby AFFIRMED WITH MODIFICATION.

The case is dismissed with respect to respondents former President Gloria Macapagal-Arroyo, P/CSupt. Ameto G. Tolentino, and P/SSupt. Jude W. Santos, Calog, George Palacpac, Antonio Cruz, Aldwin Pasicolan and Vincent Callagan for lack of merit.

This Court directs the Office of the Ombudsman (Ombudsman) and the Department of Justice (DOJ) to take the appropriate action with respect to any possible liability or liabilities, within their respective legal competence, that may have been incurred by respondents Gen. Victor Ibrado, PDG. Jesus Verzosa, Lt. Gen. Delfin Bangit, Maj. Gen. Nestor Ochoa, Brig. Gen. Remegio De Vera, 1st Lt. Ryan Matutina, and Lt. Col. Laurence Mina. The Ombudsman and

the DOJ are ordered to submit to this Court the results of their action within a period of six months from receipt of this Decision.

In the event that herein respondents no longer occupy their respective posts, the directives mandated in this Decision and in the Court of Appeals are enforceable against the incumbent officials holding the relevant positions. Failure to comply with the foregoing shall constitute contempt of court.

SO ORDERED.

After a careful examination of the records, the Court was convinced that the Court of Appeals correctly found sufficient evidence proving that the soldiers of the 17th Infantry Battalion, 5th Infantry Division of the military abducted petitioner Rodriguez on 6 September 2009, and detained and tortured him until 17 September 2009.

Pursuant to the Decision ordering the Office of the Ombudsman to take further action, Ombudsman Conchita Carpio Morales sent this Court a letter dated 23 May 2012, requesting an additional two-month period, or until 24 July 2012, within which to submit a report. The Ombudsman stated that Noriel Rodriguez (Rodriguez) and his family refused to cooperate with the investigation for security reasons.

On 6 January 2012, respondents filed their Motion for Reconsideration,[1] arguing that the soldiers belonging to the 17th Infantry Battalion, 5th Infantry Division of the military cannot be held accountable for authoring the abduction and torture of petitioner. Their arguments revolve solely on the claim that respondents were never specifically mentioned by name as having performed, permitted, condoned, authorized, or allowed the commission of any act or incurrence omission which would violate or threaten with violation the rights to life, liberty, and security of petitioner-respondent and his family.[2]

On 18 January 2013, the Ombudsman submitted the Investigation Report, as compliance with the Court's directive

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[1] *Rollo*, pp. 567-594.

[2] *Id.* at 575.

to take appropriate action with respect to possible liabilities respondents may have incurred. The exhaustive report detailed the steps taken by the Field Investigation Office (FIO) of the Office of the Ombudsman, concluding that no criminal, civil, or administrative liabilities may be imputed to the respondents. It was reflected therein that the lawyers for the Rodriguezes had manifested to the FIO that the latter are hesitant to appear before them for security reasons, *viz*:

> *Karapatan* (a non-governmental organization that provides legal assistance to victims of human rights violations and their families) could not locate Noriel and Rodel. As of this writing, the Rodriguezes refused to participate in the present fact-finding investigation 'for security reasons.' Atty. Yambot disclosed (through a Manifestation dated March 30, 2012 that despite efforts to convince Noriel to participate in the present proceedings, the latter 'remains unconvinced and unwilling to this date.'
>
> Recent information, however, revealed that Noriel and his family are no longer interested in participating in the present case.
>
> Instead of appearing before this Office for a conference under oath, SPO1 Robert B. Molina submitted an Affidavit dated June 13, 2012 stating that on September 15, 2009, at around 11:00 o'clock in the morning, Wilma H. Rodriguez appeared before the Gonzaga Police Station and requested to enter into the blotter that her son, Noriel, was allegedly missing in Sitio Comunal, Gonzaga, Cagayan. Thereupon, he gathered information relative to Wilma's report "but the community residence failed to reveal anything".[3]

The other accounts – specifically that of respondent Antonino C. Cruz, Special Investigator II of the Commission on Human Rights (CHR), as well as the claims of respondents Mina and De Vera that they had disclosed to the CHR that Noriel had become an agent ("asset") of the 17th Infantry Battalion – have been thoroughly evaluated and ruled upon in our Decision. The OMB further laments, "If only he (Noriel) could be asked to verify the circumstances under which he executed these subsequent affidavits, his inconsistent claims will finally be settled," and that "(I)f there is one person who can attest on

[3] P. 7, Investigation Report, CPL-C-11-2608.

whether detention and torture were indeed committed by any of the Subjects herein, it is Noriel Rodriguez himself, the supposed victim."[4]

The purported unwillingness of the petitioner to appear or participate at this stage of the proceedings due to security reasons does not affect the rationale of the writ granted by the CA, as affirmed by this Court. In any case, the issue of the existence of criminal, civil, or administrative liability which may be imputed to the respondents is not the province of *amparo* proceedings — rather, the writ serves both preventive and curative roles in addressing the problem of extrajudicial killings and enforced disappearances. It is preventive in that it breaks the expectation of impunity in the commission of these offenses, and it is curative in that it facilitates the subsequent punishment of perpetrators by inevitably leading to subsequent investigation and action.[5] In this case then, the thrust of ensuring that investigations are conducted and the rights to life, liberty, and security of the petitioner, remains.

We deny the motion for reconsideration.

The writ of *amparo* partakes of a summary proceeding that requires only substantial evidence to make the appropriate interim and permanent reliefs available to the petitioner. As explained in the Decision, it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or even administrative responsibility requiring substantial evidence. The totality of evidence as a standard for the grant of the writ was correctly applied by this Court, as first laid down in *Razon v. Tagitis:*

> The fair and proper rule, to our mind, is to ***consider all the pieces of evidence adduced in their totality***, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, ***we reduce our rules to the most basic test of reason*** – *i.e.*, to the

[4] *Id.* at p. 22.

[5] *Secretary of National Defense v. Manalo,* G.R. No. 180906, 7 October 2008, 568 SCRA 1, 43.

relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test.[6] (Emphasis supplied.)

No reversible error may be attributed to the grant of the privilege of the writ by the CA, and the present motion for reconsideration raises no new issues that would convince us otherwise.

Respondents' claim that they were not competently identified as the soldiers who abducted and detained the petitioner, or that there was no mention of their names in the documentary evidence, is baseless. The CA rightly considered Rodriguez's *Sinumpaang Salaysay*[7] as a meticulous and straightforward account of his horrific ordeal with the military, detailing the manner in which he was captured and maltreated on account of his suspected membership in the NPA.[8]

Petitioner narrated that at dawn on 9 September 2009, he noticed a soldier with the name tag "Matutina," who appeared to be an official because the other soldiers addressed him as "sir."[9] He saw Matutina again at 11:00 p.m. on 15 September 2009, when his abductors took him to a military operation in the mountains. His narration of his suffering included an exhaustive description of his physical surroundings, personal circumstances, and perceived observations. He likewise positively identified respondents 1st Lt. Matutina and Lt. Col. Mina to be present during his abduction, detention and torture.[10] These facts were further corroborated by Hermie Antonio Carlos in his *Sinumpaang Salaysay* dated 16 September 2009,[11] wherein he recounted in detail the circumstances surrounding the victim's capture.

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[6] G.R. No. 182498, 3 December 2009, 606 SCRA 598, 692.

[7] Dated 4 December 2009.

[8] CA *rollo* (G.R. No. 191805), pp. 14-23.

[9] *Rollo*, (G.R. No. 191805), pp. 31-32, as cited in the Decision.

[10] *Id.* at 17-23.

[11] *Id.* at 42.

Respondents' main contention in their Return of the Writ was correctly deemed illogical and contradictory by the CA. They claim that Rodriguez had complained of physical ailments due to activities in the CPP-NPA, yet nevertheless signified his desire to become a double-agent for the military. The CA stated:

> In the Return of the Writ, respondent AFP members alleged that petitioner confided to his military handler, Cpl. Navarro, that petitioner could no longer stand the hardships he experienced in the wilderness, and that he wanted to become an ordinary citizen again because of the empty promises of the CPP-NPA. However, in the same Return, respondents state that petitioner agreed to become a double agent for the military and wanted to re-enter the CPP-NPA, so that he could get information regarding the movement directly from the source. ***If petitioner was tired of life in the wilderness and desired to become an ordinary citizen again, it defies logic that he would agree to become an undercover agent and work alongside soldiers in the mountains – or the wilderness he dreads – to locate the hideout of his alleged NPA comrades***.[12] (Emphasis supplied.)

Respondents conveniently neglect to address the findings of both the CA and this Court that aside from the abduction of Rodriguez, respondents, specifically 1st Lt. Matutina, had violated and threatened the former's right to security when they made a visual recording of his house, as well as the photos of his relatives. The CA found that the soldiers even went as far as taking videos of the photos of petitioner's relatives hung on the wall of the house, and the innermost portions of the house.[13] There is no reasonable justification for this violation of the right to privacy and security of petitioner's abode, which strikes at the very heart and rationale of the Rule on the Writ of *Amparo*.

More importantly, respondents also neglect to address our ruling that *the failure to conduct a fair and effective investigation similarly amounted to a violation of, or threat to Rodriguez's rights to life, liberty, and security*.[14] The

[12] *Rollo* (G.R. No. 191805), pp. 63-64.

[13] *Id.* at 67.

[14] Page 35 of the Decision.

writ's curative role is an acknowledgment that the violation of the right to life, liberty, and security may be caused not only by a public official's act, but also by his omission. Accountability may attach to respondents who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or *those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance.[15] The duty to investigate must be undertaken in a serious manner and not as a mere formality preordained to be ineffective.[16]

The CA found that respondents Gen. Ibrado, PDG Verzosa, LT. Gen. Bangit, Maj. Gen. Ochoa, Col. De Vera, and Lt. Col. Mina conducted a perfunctory investigation which relied solely on the accounts of the military. Thus, the CA correctly held that the investigation was superficial, one-sided, and depended entirely on the report prepared by 1st Lt. Johnny Calub. No efforts were undertaken to solicit petitioner's version of the incident, and no witnesses were questioned regarding it.[17] The CA also took into account the palpable lack of effort from respondent Versoza, as the chief of the Philippine National Police.

WHEREFORE, in view of the foregoing, the Motion for Reconsideration is hereby **DENIED** with **FINALITY**. Let a copy of this Resolution be furnished the Ombudsman for whatever appropriate action she may still take under circumstances.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.*, concur.

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[15] *Supra* note 3.

[16] *Supra* note 5 at 42.

[17] *Rollo* (G.R. No. 191805), pp. 66, 68.

EN BANC

[G.R. No. 194994. April 16, 2013]

EMMANUEL A. DE CASTRO, *petitioner, vs.* **EMERSON S. CARLOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; HIERARCHY OF COURTS; MUST BE STRICTLY OBSERVED IN FILING PETITIONS FOR *CERTIORARI*, PROHIBITION, *MANDAMUS*, *QUO WARRANTO*, AND *HABEAS CORPUS*; EXCEPTION.— Although Section 5(1) of Article VIII of the 1987 Constitution explicitly provides that the Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, the jurisdiction of this Court is not exclusive but is concurrent with that of the Court of Appeals and regional trial court and does not give petitioner unrestricted freedom of choice of court forum. The hierarchy of courts must be strictly observed. Settled is the rule that "the Supreme Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition." A disregard of the doctrine of hierarchy of courts warrants, as a rule, the outright dismissal of a petition. A direct invocation of this Court's jurisdiction is allowed only when there are special and important reasons that are clearly and specifically set forth in a petition. The rationale behind this policy arises from the necessity of preventing (1) inordinate demands upon the time and attention of the Court, which is better devoted to those matters within its exclusive jurisdiction; and (2) further overcrowding of the Court's docket.

2. ID.; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; NATURE.— "A petition for *quo warranto* is a proceeding to determine the right of a person to use or exercise a franchise or an office and to oust the holder from the enjoyment, thereof, if the claim is not well-founded, or if his right to enjoy the privilege has been forfeited." Where the action is filed by a private person, in his own name, he must prove that he is entitled to the controverted position, otherwise, respondent has a right to the

undisturbed possession of the office. x x x. In a *quo warranto* proceeding, the person suing must show that he has a clear right to the office allegedly held unlawfully by another. Absent a showing of that right, the lack of qualification or eligibility of the supposed usurper is immaterial.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; METROPOLITAN MANILA DEVELOPMENT AUTHORITY (MMDA); MMDA CHARTER; ASSISTANT GENERAL MANAGER FOR OPERATIONS; HOLDS A CAREER POSITION CHARACTERIZED BY THE EXISTENCE OF SECURITY OF TENURE.— Section 4 of Republic Act No. (R.A.) 7924, otherwise known as the MMDA Charter, specifically created the position of AGMO. x x x [T]his Court finds that an AGMO holds a career position, considering that the MMDA Charter specifically provides that AGMs enjoy security of tenure – the core characteristic of a career service, as distinguished from a non-career service position.

4. ID.; ID.; ADMINISTRATIVE CODE OF 1987; CIVIL SERVICE POSITIONS; CLASSIFICATIONS.— Executive Order No. (E.O.) 292, otherwise known as The Revised Administrative Code of 1987, provides for two classifications of positions in the civil service: career and non-career. Career service is characterized by the existence of security of tenure, as contradistinguished from non-career service whose tenure is coterminous with that of the appointing authority; or subject to the latter's pleasure; or limited to a period specified by law or to the duration of a particular project for which purpose the appointment was made.

5. ID.; ID.; ID.; ID.; CAREER SERVICE POSITIONS.— Career service includes the following: "(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required; (2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems; (3) **Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career**

Executive Service Board, all of whom are appointed by the President; (4)Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs; (5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system; (6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and (7) Permanent laborers, whether skilled, semi-skilled, or unskilled."

6. ID.; ID.; ID.; ID.; ID.; CAREER EXECUTIVE SERVICE (CES); ELEMENTS REQUIRED FOR A POSITION TO BE CONSIDERED AS CES.— [T]here are two elements required for a position to be considered as CES: 1) The position is among those enumerated under Book V, Title I, Subtitle A , Chapter 2, Section 7(3) of the Administrative Code of 1987 *OR* a position of equal rank as those enumerated and identified by the CESB to be such position of equal rank; *AND* 2) The holder of the position is a presidential appointee.

7. ID.; ID.; ID.; ID.; ID.; ID.; THE POSITION OF ASSISTANT GENERAL MANAGER FOR OPERATIONS IS WITHIN THE COVERAGE THEREOF.— Resolution No. 799 classified the following positions as falling within the coverage of the CES: " a. The Career Executive Service includes the positions of Undersecretary, Assistant Secretary, Bureau director, Assistant Bureau Director, regional Director (department-wide and bureau-wide), Assistant Regional Director (department-wide and bureau-wide), and Chief of Department Service; b. Unless provided otherwise, all other managerial or executive positions in the government, including government-owned or controlled corporations with original charters are embraced within the CES provided that they meet the following criteria: i.) The position is a career position; ii.) The position is above division chief level; and, iii.) The duties and responsibilities of the position require performance of executive and managerial functions." Without a doubt, the AGMO position is not one of those enumerated in the above-cited paragraph(a) but it clearly falls under paragraph(b) considering that it belongs to a government-owned and controlled corporation with an original charter. The nature of AGMO is clear from the provisions of the MMDA Charter. First, we have already determined that an

AGMO is a career position that enjoys security of tenure by virtue of the MMDA Charter. Second, it is undisputed that the position of AGMO is above the division chief level, which is equivalent to the rank of assistant secretary with Salary Grade 29. Third, a perusal of the MMDA Charter readily reveals that the duties and responsibilities of the position require the performance of executive and managerial functions. Section 12.4, Rule IV of the Rules and Regulations Implementing R.A. 7924 provides the powers, functions, duties and responsibilities of an AGMO x x x. An AGMO performs functions that are managerial in character; exercises management over people, resource, and/or policy; and assumes functions like planning, organizing, directing, coordinating, controlling, and overseeing the activities of MMDA. The position requires the application of managerial or supervisory skills necessary to carry out duties and responsibilities involving functional guidance, leadership, and supervision. For the foregoing reasons, the position of AGMO is within the coverage of the CES.

8. ID.; ID.; ID.; ID.; ID.; AN ASSISTANT GENERAL MANAGER FOR OPERATIONS WHO LACKS THE REQUIRED CAREER SERVICE EXECUTIVE ELIGIBILITY HOLDS A TEMPORARY APPOINTMENT; CASE AT BAR.— [P]ositions in the career service, for which appointments require examinations, are grouped into three major levels x x x. Entrance to different levels requires corresponding civil service eligibilities. Those at the third level (CES positions) require career service executive eligibility (CSEE) as a requirement for permanent appointment. Evidently, an AGMO should possess all the qualifications required by third-level career service within the CES. In this case, petitioner does not have the required eligibility. Therefore, we find that his appointment to the position of AGMO was merely temporary. x x x Petitioner undisputedly lacked CES eligibility. Thus, he did not hold the position of AGMO in a permanent capacity or acquire security of tenure in that position. Otherwise stated, his appointment was temporary and "co-terminus with the appointing authority." In *Carillo v. CA*, this Court ruled that "one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated at the pleasure of the appointing power, there being no need to show that the termination is for cause." Therefore, we find no violation of security of tenure when petitioner was replaced

by respondent upon the latter's appointment to the position of AGMO by President Aquino.

APPEARANCES OF COUNSEL

Bernardino P. Salvador, Jr. for petitioner.
Rodrigo Berenguer & Guno for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before us is a Petition for the issuance of a writ of *quo warranto* under Rule 66 filed by Emmanuel A. de Castro (petitioner) seeking to oust respondent Emerson S. Carlos (respondent) from the position of assistant general manager for operations (AGMO) of the Metropolitan Manila Development Authority (MMDA).

On 29 July 2009, then President Gloria Macapagal Arroyo appointed petitioner as AGMO.[1] His appointment was concurred in by the members of the Metro Manila Council in MMDA Resolution No. 09-10, Series of 2009.[2] He took his oath on 17 August 2009 before then Chairperson Bayani F. Fernando.[3]

Meanwhile, on 29 July 2010, Executive Secretary Paquito Ochoa issued Office of the President (OP) Memorandum Circular No. 2, Series of 2010, amending OP Memorandum Circular No. 1, Series of 2010.

OP Memorandum Circular No. 2 states:

2. All non-Career Executive Service Officials (non-CESO) occupying Career Executive Service (CES) positions in all agencies of the executive branch shall remain in office and continue to perform their duties and discharge their responsibility until October 31, 2010 or until their resignations have been accepted and/or until their respective

[1] *Rollo*, p. 21.

[2] *Id.* at 23-24.

[3] *Id.* at 22.

replacements have been appointed or designated, whichever comes first, unless they are reappointed in the meantime.[4]

On 30 July 2010, Atty. Francis N. Tolentino, chairperson of the MMDA, issued Office Order No. 106,[5] designating Corazon B. Cruz as officer-in-charge (OIC) of the Office of the AGMO. Petitioner was then reassigned to the Legal and Legislative Affairs Office, Office of the General Manager. The service vehicle and the office space previously assigned to him were withdrawn and assigned to other employees.

Subsequently, on 2 November 2010, Chairperson Tolentino designated respondent as OIC of the Office of the AGMO by virtue of Memorandum Order No. 24,[6] which in turn cited OP Memorandum Circular No. 2 as basis. Thereafter, the name of petitioner was stricken off the MMDA payroll, and he was no longer paid his salary beginning November 2010.

Petitioner sought a clarification[7] from the Career Executive Service Board (CESB) as to the proper classification of the position of AGMO. In her reply,[8] Executive Director Maria Anthonette Allones (Executive Director Allones), CESO I, stated that the position of AGMO had not yet been classified and could not be considered as belonging to the Career Executive Service (CES). She further stated that a perusal of the appointment papers of petitioner showed that he was not holding a coterminous position. In sum, she said, he was not covered by OP Memorandum Circular Nos. 1 and 2.

Petitioner was later offered the position of Director IV of MMDA Public Health and Safety Services and/or MMDA consultant. He turned down the offer, claiming that it was a demotion in rank.

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[4] *Id.* at 8.

[5] *Id.* at 26.

[6] *Id.* at 30.

[7] *Id.* at 31-32, Letter dated 5 November 2010.

[8] *Id.* at 33-34, Letter dated 12 November 2010.

Demanding payment of his salary and reinstatement in the monthly payroll,[9] petitioner sent a letter on 5 December 2010 to Edenison Faisan, assistant general manager (AGM) for Finance and Administration; and Lydia Domingo, Director III, Administrative Services. For his failure to obtain an action or a response from MMDA, he then made a formal demand for his reinstatement as AGMO through a letter addressed to the Office of the President on 17 December 2010.[10]

However, on 4 January 2011, President Benigno S. Aquino III (President Aquino) appointed respondent as the new AGMO of the MMDA.[11] On 10 January 2011, the latter took his oath of office.

Hence, the instant Petition.

The Office of the Solicitor General (OSG), representing respondent, filed its Comment on 19 August 2011.[12] However, upon motion of petitioner, it was disqualified from representing respondent. Thus, a private law firm[13] entered an appearance as counsel for respondent and adopted the Comment filed by the OSG.[14]

Petitioner filed his Reply on 17 November 2011.

ISSUES

Petitioner raises the following issues[15] for the consideration of this Court:

(1) Whether respondent Emerson S. Carlos was validly appointed by President Aquino to the position of AGMO of the MMDA;

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[9] *Id.* at 42-44.

[10] *Id.* at 45-56.

[11] *Id.* at 57.

[12] *Id.* at 111-129.

[13] Rodrigo, Berenguer & Guno.

[14] Entry of Appearance (With Prayer to Adopt Comment dated 13 September 2011).

[15] *Id.* at 14-15.

(2) Whether petitioner Emmanuel A. de Castro is entitled to the position of AGMO; and

(3) Whether or not respondent should pay petitioner the salaries and financial benefits he received during his illegal tenure as AGMO of the MMDA.

THE COURT'S RULING

Petitioner contends that Section 2(3), Article IX(B) of the 1987 Constitution guarantees the security of tenure of employees in the civil service. He further argues that his appointment as AGMO is not covered by OP Memorandum Circular No. 2, since it is not a CES position as determined by the CESB.

On the other hand, respondent posits that the AGMO position belongs to the CES; thus, in order to have security of tenure, petitioner, must be a Career Executive Service official (CESO). Respondent maintains that the function of an AGM is executive and managerial in nature. Thus, considering that petitioner is a non-CESO occupying a CES position, he is covered by OP Memorandum Circular Nos. 1 and 2. Respondent likewise raises the issue of procedural infirmity in the direct recourse to the Supreme Court by petitioner, who thereby failed to adhere to the doctrine of hierarchy of courts.

Hierarchy of Courts

As to the procedural issue, petitioner submits that a direct recourse to this Court is warranted by the urgent demands of public interest, particularly the veritable need for stability in the civil service and the protection of the rights of civil servants. Moreover, considering that no other than the President of the Philippines is the appointing authority, petitioner doubts if a trial court judge or an appellate court justice, with a prospect of promotion in the judiciary would be willing to go against a presidential appointment.

Although Section 5(1) of Article VIII of the 1987 Constitution explicitly provides that the Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, the jurisdiction of this Court is not exclusive but is concurrent with that of the Court of

Appeals and regional trial court and does not give petitioner unrestricted freedom of choice of court forum.[16] The hierarchy of courts must be strictly observed.

Settled is the rule that "the Supreme Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition."[17] A disregard of the doctrine of hierarchy of courts warrants, as a rule, the outright dismissal of a petition.[18]

A direct invocation of this Court's jurisdiction is allowed only when there are special and important reasons that are clearly and specifically set forth in a petition.[19] The rationale behind this policy arises from the necessity of preventing (1) inordinate demands upon the time and attention of the Court, which is better devoted to those matters within its exclusive jurisdiction; and (2) further overcrowding of the Court's docket.[20]

In this case, petitioner justified his act of directly filing with this Court only when he filed his Reply and after respondent had already raised the procedural infirmity that may cause the outright dismissal of the present Petition. Petitioner likewise cites stability in the civil service and protection of the rights of civil servants as rationale for disregarding the hierarchy of courts.

Petitioner's excuses are not special and important circumstances that would allow a direct recourse to this Court. More so, mere speculation and doubt to the exercise of judicial discretion of the lower courts are not and cannot be valid justifications to hurdle the hierarchy of courts. Thus, the Petition must be dismissed.

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[16] *Capalla v. COMELEC*, G.R. Nos. 201112, 201121, 201127, 201413, 13 June 2012.

[17] *Vergara Sr. v. Suelto*, 240 Phil. 719,732 (1987).

[18] *Lacson Hermanas, Inc. v. Heirs of Ignacio*, 500 Phil. 673, 676 (2005).

[19] *Ouano v. PGTT*, 434 Phil. 28, 34 (2002).

[20] *Santiago v. Vasquez*, G.R. Nos. 99289-90, 27 January 1993, 217 SCRA 633; and *People v. Cuaresma*, 254 Phil. 418, 427 (1989).

Nature of the AGMO Position

Even assuming that petitioner's direct resort to this Court is permissible, the Petition must still be dismissed for lack of merit.

"A petition for *quo warranto* is a proceeding to determine the right of a person to use or exercise a franchise or an office and to oust the holder from the enjoyment, thereof, if the claim is not well-founded, or if his right to enjoy the privilege has been forfeited."[21] Where the action is filed by a private person, in his own name, he must prove that he is entitled to the controverted position, otherwise, respondent has a right to the undisturbed possession of the office.[22]

The controversy arose from the issuance of OP Memorandum Circular Nos. 1 and 2, which applies to all non-CESO's occupying CES positions in all agencies of the executive branch. Petitioner, being a non-CESO, avers that he is not covered by these OP memoranda considering that the AGMO of the MMDA is a non-CES position.

In order to settle the controversy, there is a need to determine the nature of the contentious position of AGMO of the MMDA.

Career vs. non-career

Section 4 of Republic Act No. (R.A.) 7924,[23] otherwise known as the MMDA Charter, specifically created the position of AGMO. It reads as follows:

> Sec. 4 Metro Manila Council. x x x.
>
> xxx x x x xxx
>
> The Council shall be headed by a Chairman, who shall be appointed by the President and who shall continue to hold office at the discretion of the appointing authority. He shall be vested with the rank, rights, privileges, disqualifications, and prohibitions of a Cabinet member.

[21] *Mendoza v. Allas*, 362 Phil. 238, 244 (1999).

[22] *Id.*

[23] An Act Creating The Metropolitan Manila Development Authority, Defining Its Powers And Functions, Providing Funding Therefor And For Other Purposes.

The Chairman shall be assisted by a General Manager, an Assistant General Manager for Finance and Administration, an Assistant General Manager for Planning and an **Assistant General Manager for Operations, all of whom shall be appointed by the President with the consent and concurrence of the majority of the Council, subject to civil service laws and regulations. They shall enjoy security of tenure and may be removed for cause in accordance with law.** (Emphasis supplied)

Executive Order No. (E.O.) 292, otherwise known as The Revised Administrative Code of 1987, provides for two classifications of positions in the civil service: career and non-career.[24]

Career service is characterized by the existence of security of tenure,[25] as contradistinguished from non-career service whose tenure is coterminous with that of the appointing authority; or subject to the latter's pleasure; or limited to a period specified by law or to the duration of a particular project for which purpose the appointment was made. [26]

Applying the foregoing distinction to the instant case, this Court finds that an AGMO holds a career position, considering that the MMDA Charter specifically provides that AGMs enjoy security of tenure – the core characteristic of a career service, as distinguished from a non-career service position.

CES vs. non-CES

Career service includes the following:

(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;

(2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;

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[24] Administrative Code, Book V, Title I, Subtitle A, Chapter 2, Sec. 6.

[25] Administrative Code, Book V, Title I, Subtitle A, Chapter 2, Sec. 7.

[26] Administrative Code, Book V, Title I, Subtitle A, Chapter 2, Sec. 9.

(3) **Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President**;

(4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;

(5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;

(6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and

(7) Permanent laborers, whether skilled, semi-skilled, or unskilled.[27] (Emphasis supplied)

In *Civil Service Commission v. Court of Appeals and PCSO*,[28] the Court clarified the positions covered by the CES:

Thus, from the long line of cases cited above, in order for a position to be covered by the CES, two elements must concur. First, the position must either be (1) **a position enumerated under Book V, Title I, Subsection A, Chapter 2, Section 7(3) of the Administrative Code of 1987, *i.e.*, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service**, or (2) **a position of equal rank as those enumerated, and identified by the Career Executive Service Board to be such position of equal rank**. Second, **the holder of the position must be a presidential appointee.** Failing in any of these requirements, a position cannot be considered as one covered by the third-level or CES. (Emphasis supplied)

In sum, there are two elements required for a position to be considered as CES:

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[27] Administrative Code, Book V, Title I, Subtitle A, Chapter 2, Sec. 7.

[28] G.R. Nos. 185766 and 185767, 23 November 2010, 635 SCRA 749, 765.

1) The position is among those enumerated under Book V, Title I, Subtitle A, Chapter 2, Section 7(3) of the Administrative Code of 1987 ***OR*** a position of equal rank as those enumerated *and* identified by the CESB to be such position of equal rank; ***AND***

2) The holder of the position is a presidential appointee.

Records show that in reply[29] to Chairperson Tolentino's query on whether the positions of general manager and AGM of the MMDA are covered by the CES,[30] the CESB – thru Executive Director Allones – categorically stated that these positions are not among those covered by the CES.

Upon petitioner's separate inquiry on the matter,[31] the CESB similarly responded that the AGMO's position could not be considered as belonging to the CES.[32] Additionally, Executive Director Allones said that petitioner was not covered by OP Memorandum Circular Nos. 1 and 2, to wit:

A cursory perusal of your appointment papers would show that it does not bear any indication that you are holding a coterminous appointment. Neither your position as AGMO can be considered as created in excess of the authorized staffing pattern since RA 7924, the law that created the MMDA clearly provided for such position. As further stated above, your position will not fall under paragraph No. 2 of OP MC 1 because it is not yet considered as belonging to the CES. Hence, we posit that you are not covered by OP MC 1 and 2.[33]

However, contrary to Executive Director Allones' statement, the CESB, through Resolution No. 799 already declared certain positions meeting the criteria set therein as embraced within the CES.

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[29] *Rollo*, p. 41, Letter dated 8 September 2010.

[30] *Id.* at 35-40, Letter dated 28 August 2010.

[31] *Supra* at note 6.

[32] *Supra* at note 7.

[33] *Id.* at 34.

It is worthy of note that CESB Resolution No. 799 was issued on 19 May 2009, even prior to petitioner's appointment on 29 July 2009. Moreover, as early as 31 May 1994, the above classification was already embodied in CSC Resolution No. 34-2925, circularized in CSC Memorandum Circular 21, Series of 1994.

Resolution No. 799 classified the following positions as falling within the coverage of the CES:

a. The Career Executive Service includes the positions of Undersecretary, Assistant Secretary, Bureau director, Assistant Bureau Director, regional Director (department-wide and bureau-wide), Assistant Regional Director (department-wide and bureau-wide), and Chief of Department Service;

b. Unless provided otherwise, all other managerial or executive positions in the government, including government-owned or controlled corporations with original charters are embraced within the CES provided that they meet the following criteria:

   i.) The position is a career position;

   ii.) The position is above division chief level; and,

   iii.) The duties and responsibilities of the position require performance of executive and managerial functions.

Without a doubt, the AGMO position is not one of those enumerated in the above-cited paragraph(a) but it clearly falls under paragraph(b) considering that it belongs to a government-owned and controlled corporation with an original charter. The nature of AGMO is clear from the provisions of the MMDA Charter.

First, we have already determined that an AGMO is a career position that enjoys security of tenure by virtue of the MMDA Charter.

Second, it is undisputed that the position of AGMO is above the division chief level, which is equivalent to the rank of assistant secretary with Salary Grade 29.[34]

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[34] *Rollo*, p. 123, Comment.

Third, a perusal of the MMDA Charter readily reveals that the duties and responsibilities of the position require the performance of executive and managerial functions.

Section 12.4, Rule IV of the Rules and Regulations Implementing R.A. 7924 provides the powers, functions, duties and responsibilities of an AGMO, as follows:

> 12.4 Assistant General Manager for Operations
>
> The Assistant General Manager for Operations shall perform the following functions:
>
> a. Establish a mechanism for coordinating and operationalizing the delivery of metro-wide basic services;
>
> b. Maintain a monitoring system for the effective evaluation of the implementation of approved policies, plans and programs for the development of Metropolitan Manila;
>
> c. Mobilize the participation of local government units, executive departments or agencies of the national government, and the private sector in the delivery of metro-wide services; and
>
> d. Operate a central radio communication system.
>
> He shall perform such other duties as are incidental or related to the above functions or as may be assigned from time to time.

An AGMO performs functions that are managerial in character; exercises management over people, resource, and/or policy; and assumes functions like planning, organizing, directing, coordinating, controlling, and overseeing the activities of MMDA. The position requires the application of managerial or supervisory skills necessary to carry out duties and responsibilities involving functional guidance, leadership, and supervision.

For the foregoing reasons, the position of AGMO is within the coverage of the CES.

In relation thereto, positions in the career service, for which appointments require examinations, are grouped into three major levels:[35]

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[35] Administrative Code, Book V, Title 1, Subtitle A, Chapter 2, Sec. 8.

Sec. 8. Classes of positions in the Career Service. — (1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

(a) The first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

(b) The second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief levels; and

(c) The third level shall cover positions in the Career Executive Service. (Emphasis supplied)

Entrance to different levels requires corresponding civil service eligibilities.[36] Those at the third level (CES positions) require career service executive eligibility (CSEE) as a requirement for permanent appointment.[37]

Evidently, an AGMO should possess all the qualifications required by third-level career service within the CES. In this case, petitioner does not have the required eligibility. Therefore, we find that his appointment to the position of AGMO was merely temporary.

Amores v. Civil Service Commission[38] is instructive as to the nature of temporary appointments in the CES. The Court held therein that an appointee cannot hold a position in a permanent capacity without the required CES eligibility:

We begin with the precept, firmly established by law and jurisprudence that a permanent appointment in the civil service is issued to a person who has met the requirements of the position to which the appointment is made in accordance with law and the rules

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[36] *Abella Jr. v. CSC*, 485 Phil. 182, 204 (2004).

[37] Memorandum Circular 37, s. 1998, dated 20 October 1998; Memorandum Circular 1, s. 1997, dated 24 January 1997.

[38] G.R. No. 170093, 29 April 2009, 587 SCRA 160, 167-169.

issued pursuant thereto. An appointment is permanent where the appointee meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, and it is temporary where the appointee meets all the requirements for the position except only the appropriate civil service eligibility.

x x x x x x x x x

With particular reference to positions in the career executive service (CES), the requisite civil service eligibility is acquired upon passing the CES examinations administered by the CES Board and the subsequent conferment of such eligibility upon passing the examinations. Once a person acquires eligibility, he either earns the status of a permanent appointee to the CES position to which he has previously been appointed, or he becomes qualified for a permanent appointment to that position provided only that he also possesses all the other qualifications for the position. Verily, it is clear that the possession of the required CES eligibility is that which will make an appointment in the career executive service a permanent one. Petitioner does not possess such eligibility, however, it cannot be said that his appointment to the position was permanent.

Indeed, the law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government. But in all such cases, the appointment is at best merely temporary as it is said to be conditioned on the subsequent obtention of the required CES eligibility. This rule, according to *De Leon v. Court of Appeals, Dimayuga v. Benedicto, Caringal v. Philippine Charity Sweepstakes Office, and Achacoso v. Macaraig*, is invariable even though the given appointment may have been designated as permanent by the appointing authority.

x x x x x x x x x

Security of tenure in the career executive service, which presupposes a permanent appointment, takes place upon passing the CES examinations administered by the CES Board x x x.

Petitioner undisputedly lacked CES eligibility. Thus, he did not hold the position of AGMO in a permanent capacity or acquire security of tenure in that position. Otherwise stated, his appointment was temporary and "co-terminus with the

appointing authority."[39] In *Carillo v. CA*,[40] this Court ruled that "one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated at the pleasure of the appointing power, there being no need to show that the termination is for cause." Therefore, we find no violation of security of tenure when petitioner was replaced by respondent upon the latter's appointment to the position of AGMO by President Aquino.

Even granting for the sake of argument that the position of AGMO is yet to be classified by the CESB, petitioner's appointment is still deemed coterminous pursuant to CESB Resolution No. 945 issued on 14 June 2011, which reads:

WHEREAS, on November 23, 2010, the Supreme Court in the case of *PCSO v. CSC*, G.R. NO. 185766 and G.R. No. 185767 limited the coverage of positions belonging to the CES to positions requiring Presidential appointments.

WHEREAS, in the same vein, CES positions have now become synonymous to third level positions by virtue of the said ruling.

WHEREFORE, foregoing premises considered, the Board RESOLVES, as it is hereby RESOLVED, to issue the following guidelines to clarify the policy on the coverage of CES and its classification:

1. For career service positions requiring Presidential appointments expressly enumerated under Section 7(3), Chapter 2, Subtitle A, Title 1, Book V of the Administrative Code of 1987 namely: Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, and Chief of Department Service, no classification of position is necessary to place them under the coverage of the CES, except if they belong to Project Offices, in which case a position classification is required, in consultation with the Department of Budget and Management (DBM).

2. **For positions requiring Presidential appointments other than those enumerated above**, a classification of positions is

[39] *Ong v. Office of the President*, G.R. No. 184219, 30 January 2012, 664 SCRA 413, 418-419.

[40] 167 Phil. 527, 533 (1977).

necessary which shall be conducted by the Board, upon request of the head of office of the government department/ agency concerned, to place them under the coverage of the CES provided they comply with the following criteria:

i.) The position is a career position;
ii.) The position is above division chief level; and,
iii.) The duties and responsibilities of the position require the performance of executive and managerial functions.

All appointments to positions which have not been previously classified as part of the CES would be deemed co-terminus with the appointing authority. (Emphasis supplied)

Therefore, considering that petitioner is an appointee of then President Arroyo whose term ended on 30 June 2010, petitioner's term of office was also deemed terminated upon the assumption of President Aquino.

Likewise, it is inconsequential that petitioner was allegedly replaced by another non-CESO eligible. In a *quo warranto* proceeding, the person suing must show that he has a clear right to the office allegedly held unlawfully by another. Absent a showing of that right, the lack of qualification or eligibility of the supposed usurper is immaterial.[41]

All the foregoing considered, the petition merits an outright dismissal for disregarding the hierarchy of courts and petitioner's lack of cause of action against respondent for failure to sufficiently show that he has undisturbed rights to the position of AGMO of the MMDA.

WHEREFORE, premises considered, the Petition is **DENIED.**

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

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[41] See *Civil Service Commission v. Engineer Ali Darangina*, 542 Phil. 635 (2007).

EN BANC

[G.R. No. 195649. April 16, 2013]

CASAN MACODE MAQUILING, *petitioner, vs.* **COMMISSION ON ELECTIONS, ROMMEL ARNADO *y* CAGOCO, LINOG G. BALUA,** *respondents.*

SYLLABUS

1. POLITICAL LAW ; ELECTION LAWS; REPUBLIC ACT NO. 6646 (THE ELECTORAL REFORMS LAW); DISQUALIFICATION CASES; INTERVENTION IS ALLOWED IN DISQUALIFICATION PROCEEDINGS WHERE NO FINAL JUDGMENT HAS YET BEEN RENDERED; CASE AT BAR.— Maquiling has the right to intervene in the case. The fact that the COMELEC *En Banc* has already ruled that Maquiling has not shown that the requisites for the exemption to the second-placer rule set forth in *Sinsuat v. COMELEC* are present and therefore would not be prejudiced by the outcome of the case, does not deprive Maquiling of the right to elevate the matter before this Court. Arnado's claim that the main case has attained finality as the original petitioner and respondents therein have not appealed the decision of the COMELEC *En Banc*, cannot be sustained. The elevation of the case by the intervenor prevents it from attaining finality. It is only after this Court has ruled upon the issues raised in this instant petition that the disqualification case originally filed by Balua against Arnado will attain finality.

2. ID.; CITIZENSHIP; REPUBLIC ACT NO. 9225 (THE CITIZENSHIP RETENTION AND RE-ACQUISITION ACT OF 2003); ELIGIBILITY TO RUN FOR PUBLIC OFFICE; RENUNCIATION OF FOREIGN CITIZENSHIP; MUST BE ABSOLUTE AND PERPETUAL AND A FULL DIVESTMENT OF ALL CIVIL AND POLITICAL RIGHTS GRANTED BY THE FOREIGN COUNTRY WHICH GRANTED THE CITIZENSHIP.— After reacquiring his Philippine citizenship, Arnado renounced his American citizenship by executing an Affidavit of Renunciation, thus completing the requirements for eligibility to run for public office. By renouncing his foreign

citizenship, he was deemed to be solely a Filipino citizen, regardless of the effect of such renunciation under the laws of the foreign country. However, this legal presumption does not operate permanently and is open to attack when, after renouncing the foreign citizenship, the citizen performs positive acts showing his continued possession of a foreign citizenship. Arnado himself subjected the issue of his citizenship to attack when, after renouncing his foreign citizenship, he continued to use his US passport to travel in and out of the country before filing his certificate of candidacy on 30 November 2009. x x x The renunciation of foreign citizenship is not a hollow oath that can simply be professed at any time, only to be violated the next day. It requires an absolute and perpetual renunciation of the foreign citizenship and a full divestment of all civil and political rights granted by the foreign country which granted the citizenship.

3. ID.; ID.; ID.; ID.; ID.; THE ACT OF USING A FOREIGN PASSPORT REPUDIATES THE VERY OATH OF RENUNCIATION.— While the act of using a foreign passport is not one of the acts enumerated in Commonwealth Act No. 63 constituting renunciation and loss of Philippine citizenship, it is nevertheless an act which repudiates the very oath of renunciation required for a former Filipino citizen who is also a citizen of another country to be qualified to run for a local elective position.

4. ID.; ID.; ID.; ID.; ID.; THE ACT OF USING A FOREIGN PASSPORT AFTER RENOUNCING FOREIGN CITIZENSHIP RESULTS IN DUAL CITIZENSHIP WHICH IS GROUND FOR DISQUALIFICATION TO RUN FOR A LOCAL ELECTIVE POSITION; DUAL CITIZENS BY BIRTH AND DUAL CITIZENS BY NATURALIZATION, DISTINGUISHED.— This act of using a foreign passport after renouncing one's foreign citizenship is fatal to Arnado's bid for public office, as it effectively imposed on him a disqualification to run for an elective local position. Arnado's category of dual citizenship is that by which foreign citizenship is acquired through a positive act of applying for naturalization. This is distinct from those considered dual citizens by virtue of birth, who are not required by law to take the oath of renunciation as the mere filing of the certificate of candidacy already carries with it an implied renunciation of foreign citizenship. Dual citizens by

naturalization, on the other hand, are required to take not only the Oath of Allegiance to the Republic of the Philippines but also to personally renounce foreign citizenship in order to qualify as a candidate for public office. By the time he filed his certificate of candidacy on 30 November 2009, Arnado was a dual citizen enjoying the rights and privileges of Filipino and American citizenship. He was qualified to vote, but by the express disqualification under Section 40(d) of the Local Government Code, he was not qualified to run for a local elective position.

5. ID.; ID.; ID.; ID.; ID.; CITIZENSHIP REQUIREMENT MUST BE POSSESSED NOT JUST AT THE TIME THEREOF BUT CONTINOUSLY.— The citizenship requirement for elective public office is a continuing one. It must be possessed not just at the time of the renunciation of the foreign citizenship but continuously. Any act which violates the oath of renunciation opens the citizenship issue to attack.

6. ID.; ID.; ID.; ID.; ID.; REQUIRED FOR THOSE WHO ACQUIRE DUAL CITIZENSHIP BY CHOICE.—Citizenship is not a matter of convenience. It is a badge of identity that comes with attendant civil and political rights accorded by the state to its citizens. It likewise demands the concomitant duty to maintain allegiance to one's flag and country. While those who acquire dual citizenship by choice are afforded the right of suffrage, those who seek election or appointment to public office are required to renounce their foreign citizenship to be deserving of the public trust. Holding public office demands full and undivided allegiance to the Republic and to no other.

7. ID.; ELECTION LAWS; ELIGIBILITY OF CANDIDATES; THE INELIGIBILITY OF A CANDIDATE CANNOT BE CURED BY THE NUMBER OF BALLOTS CAST IN HIS FAVOR.— An ineligible candidate who receives the highest number of votes is a wrongful winner. By express legal mandate, he could not even have been a candidate in the first place, but by virtue of the lack of material time or any other intervening circumstances, his ineligibility might not have been passed upon prior to election date. Consequently, he may have had the opportunity to hold himself out to the electorate as a legitimate and duly qualified candidate. However, notwithstanding the outcome of the elections, his ineligibility as a candidate remains unchanged. Ineligibility does not only pertain to his qualifications as a candidate but necessarily affects his right to hold public office.

The number of ballots cast in his favor cannot cure the defect of failure to qualify with the substantive legal requirements of eligibility to run for public office. The ballot cannot override the constitutional and statutory requirements for qualifications and disqualifications of candidates. When the law requires certain qualifications to be possessed or that certain disqualifications be not possessed by persons desiring to serve as elective public officials, those qualifications must be met before one even becomes a candidate. When a person who is not qualified is voted for and eventually garners the highest number of votes, even the will of the electorate expressed through the ballot cannot cure the defect in the qualifications of the candidate. To rule otherwise is to trample upon and rent asunder the very law that sets forth the qualifications and disqualifications of candidates. We might as well write off our election laws if the voice of the electorate is the sole determinant of who should be proclaimed worthy to occupy elective positions in our republic.

8. ID.; ID.; ID.; THE VOTES FOR THE INELIGIBLE CANDIDATE SHALL BE DISREGARDED AND THE NEXT IN RANK WHO DOES NOT POSSESS ANY OF THE DISQUALIFICATIONS NOR LACKS ANY OF THE QUALIFICATIONS SET IN THE RULES TO BE ELIGIBLE AS CANDIDATES SHALL BECOME THE WINNER.— With Arnado's disqualification, Maquiling then becomes the winner in the election as he obtained the highest number of votes from among the qualified candidates. We have ruled in the recent cases of *Aratea v. COMELEC* and *Jalosjos v. COMELEC* that a void COC cannot produce any legal effect. Thus, the votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election. Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected. As in any contest, elections are governed by rules that determine the qualifications and disqualifications of those who are allowed to participate as players. When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any of the

disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.

9. ID.; ID.; ID.; KNOWLEDGE BY THE ELECTORATE OF A CANDIDATE'S DISQUALIFICATION IS NOT NECESSARY BEFORE A QUALIFIED CANDIDATE WHO PLACED SECOND TO A DISQUALIFIED ONE CAN BE PROCLAIMED AS THE WINNER.— The electorate's awareness of the candidate's disqualification is not a prerequisite for the disqualification to attach to the candidate. The very existence of a disqualifying circumstance makes the candidate ineligible. Knowledge by the electorate of a candidate's disqualification is not necessary before a qualified candidate who placed second to a disqualified one can be proclaimed as the winner. The second-placer in the vote count is actually the first-placer among the qualified candidates.

10. ID.; ID.; ID.; THE DISQUALIFICATION THAT EXISTED PRIOR TO THE FILING OF THE CERTIFICATE OF CANDIDACY VOIDS NOT ONLY THE CERTIFICATE OF CANDIDACY BUT ALSO THE PROCLAMATION; CASE AT BAR.— The subsequent disqualification based on a substantive ground that existed prior to the filing of the certificate of candidacy voids not only the COC but also the proclamation. x x x The diaqualifying curcumstance affecting Arnado is his citizenship. x x x Arnado was both a Filipino and an American citizen when he filed his certificate of candidacy. He was a dual citizen disqualified to run for public office based on Section 40(d) of the Local Government Code. x x x With Arnado being barred from even becoming a candidate, his certificate of candidacy is thus rendered void from the beginning. It could not have produced any other legal effect except that Arnado rendered it impossible to effect his disqualification prior to the elections because he filed his answer to the petition when the elections were conducted already and he was already proclaimed the winner. To hold that such proclamation is valid is to negate the prohibitory character of the disqualification which Arnado possessed even prior to the filing of the certificate of candidacy. The affirmation of Arnado's disqualification, although made long after the elections, reaches back to the filing of the certificate of candidacy. Arnado is declared to be not a candidate at all in the May 2010 elections. Arnado being a non-candidate, the votes cast in his favor should not have been counted. This

leaves Maquiling as the qualified candidate who obtained the highest number of votes. Therefore, the rule on succession under the Local Government Code will not apply.

CARPIO, *J., concurring opinion*:

1. POLITICAL LAW; CITIZENSHIP; REPUBLIC ACT NO. 9225 (THE CITIZENSHIP RETENTION AND RE-ACQUISITION ACT OF 2003); ELIGIBILITY TO RUN FOR PUBLIC OFFICE; TWIN REQUIREMENTS OF ALLEGIANCE AND RENUNCIATION; FAILURE TO COMPLY THEREWITH IS A GROUND TO DISQUALIFY A CANDIDATE FOR ELECTIVE PUBLIC OFFICE.—Arnado, as a naturalized American citizen and a repatriated Filipino, is required by law to swear to an Oath of Allegiance to the Republic of the Philippines and execute a Renunciation of Foreign Citizenship before he may seek elective Philippine public office. x x x Arnado's use of his American passport after his execution of an Affidavit of Renunciation of his American Citizenship is a **retraction** of his renunciation. When Arnado filed his Certificate of Candidacy on 30 November 2009, there was no longer an effective renunciation of his American citizenship. It is as if he never renounced his American citizenship at all. Arnado, therefore, failed to comply with the twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship as found in Republic Act No. 9225. x x x Arnado's failure to comply with the twin requirements of R.A. No. 9225 is clearly a failure to qualify as a candidate for Philippine elective public office. He is still deemed, under Philippine law, holding allegiance to a foreign country, which disqualifies him from running for an elective public office. Such failure to comply with the twin requirements of R.A. No. 9225 is included among the grounds for disqualification in Section 68 of the Omnibus Election Code: "*Disqualifications.* – x x x. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in election laws."

2. ID.; ELECTION LAWS; CERTIFICATE OF CANDIDACY; GARNERING THE HIGHEST NUMBER OF VOTES FOR AN ELECTIVE POSITION DOES NOT CURE A CERTIFICATE OF

CANDIDACY VOID *AB INITIO*.— Arnado used his USA passport **after** his Renunciation of American Citizenship and **before** he filed his Certificate of Candidacy. This positive act of retraction of his renunciation before the filing of the Certificate of Candidacy renders Arnado's Certificate of Candidacy **void** *ab initio*. Therefore, Arnado was **never** a candidate at any time, and all the votes for him are **stray votes**. x x x It is undisputed that Arnado had to comply with the twin requirements of allegiance and renunciation. However, Arnado's use of his USA passport after the execution of his Affidavit of Renunciation constituted a retraction of his renunciation, and led to his failure to comply with the requirement of renunciation at the time he filed his certificate of candidacy. His certificate of candidacy was thus void *ab initio*. Garnering the highest number of votes for an elective position does not cure this defect. Maquiling, the alleged "second placer," should be proclaimed Mayor because Arnado's certificate of candidacy was void *ab initio*. Maquiling is the qualified candidate who actually garnered the highest number of votes for the position of Mayor.

ABAD, *J., separate and concurring opinion*:

POLITICAL LAW; THE IMMIGRATION AND NATIONALITY ACT; RENUNCIATION OF UNITED STATES CITIZENSHIP; REQUIREMENT, NOT COMPLIED WITH IN CASE AT BAR.— The majority opinion amply states that by his acts, Arnado showed that he did not effectively renounce his U.S. citizenship. To this I add that he also failed to comply with the U.S. requirements for citizens wishing to renounce their citizenships. Section 349 (a)(5) of the Immigration and Nationality Act (INA) sets the procedure that those who have moved their residence to other countries must observe when renouncing their U.S. citizenship. It provides that "(a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality – x x x (5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the

Secretary of State." He does not effectively renounce his citizenship who does not comply with what his country requires of him. Here, there is no showing that Arnado, a U.S. citizen, fulfilled the above requirement. To the eyes of the U.S. government, Arnado remains its citizen, owing obligations of loyalty to it and subject to its laws wherever he may be. Indeed, the U.S. government had not cancelled his passport, permitting him to use the same a number of times after he reacquired his Philippine citizenship. If the U.S. continues to regard Arnado as its citizen, then he has two citizenships, a ground for cancelling his certificate of candidacy for a public office in the Philippines.

BRION, *J.*, *dissenting opinion*:

1. POLITICAL LAW; CITIZENSHIP; REPUBLIC ACT NO. 9225 (THE CITIZENSHIP RETENTION AND RE-ACQUISITION ACT OF 2003); PURPOSE.— RA 9225 was enacted to allow the re-acquisition and retention of Philippine citizenship by: 1) natural-born citizens who were deemed to have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country; and 2) natural-born citizens of the Philippines who, after the effectivity of the law, became citizens of a foreign country. The law provides that they are deemed to have re-acquired or retained their Philippine citizenship upon taking the oath of allegiance.

2. ID.; ID.; ID.; ELIGIBILITY TO RUN FOR PUBLIC OFFICE; REQUIREMENTS; COMPLIED WITH IN CASE AT BAR.— Arnado indisputably re-acquired Philippine citizenship after taking the Oath of Allegiance not only once but twice – on July 10, 2008 and April 3, 2009. Separately from this oath of allegiance, Arnado took an oath renouncing his American citizenship as additionally required by RA 9225 for those seeking public office. x x x In *Japzon v. Commission on Elections,* we ruled that Section 5(2) of RA 9225 requires the twin requirements of taking an Oath of Allegiance and the execution of a similarly sworn Renunciation of Foreign Citizenship. x x x In the present case, Arnado indisputably complied with the second requirement of Section 5(2) of RA 9225. On April 3, 2009, he personally

executed an Affidavit of Renunciation an Oath of Allegiance before notary public Thomas Dean M. Quijano. Therefore, when he filed his CoC for the position of Mayor of the Municipality of Kauswagan, Lanao del Norte on November 30, 2009, he had already effectively renounced his American citizenship, solely retaining his Philippine citizenship as the law requires. In this way, Arnado qualified for the position of Mayor of Kauswagan, Lanao del Norte and filed a valid CoC.

3. ID.; ID.; ID.; ID.; THE ACT OF USING THE UNITED STATES PASSPORT IS NOT, BY ITSELF, AN EXPRESS RENUNCIATION OF THE PHILIPPINE CITIZENSHIP IN CASE AT BAR.—The records bear out that Arnado used his US passport in two trips to and from the US *after* he had executed his Affidavit of Renunciation on April 3, 2009. x x x Arnado's Philippine passport was issued on June 18, 2009, but he was not immediately notified of the issuance so that and he only received his passport three months after or sometime in ***September 2009***. ***Clearly, when Arnado travelled on April 14, 2009, June 25, 2009 and July 29, 2009, he had no Philippine passport that he could have used to travel to the United States to attend to the winding up of his business and other affairs in America.*** A travel document issued by the proper Philippine government agency (*e.g.*, a Philippine consulate office in the US) would not suffice because travel documents could not be used; they are issued only in critical instances, as determined by the consular officer, and allow the bearer only a direct, one-way trip to the Philippines. Although Arnado received his Philippine passport by the time he returned to the Philippines on November 24, 2009, he could not use this without risk of complications with the US immigration authorities for using a travel document different from what he used in his entry into the US on July 29, 2009. Plain practicality then demanded that the travel document that he used to enter the US on July 29, 2009 be the same travel document he should use in leaving the country on November 24, 2009. Given these circumstances, Arnado's use of his US passport in travelling back to the Philippines on November 24, 2009 was an isolated act that could not, by itself, be an express renunciation of the Philippine citizenship he adopted as his sole citizenship under RA 9225.

4. ID.; ID.; ID.; ID.; EXPRESS RENUNCIATION IS REQUIRED IN ORDER TO LOSE PHILIPPINE CITIZENSHIP.— I loathe to rule that Arnado's use of his US passport amounts to an express renunciation of his Filipino citizenship, when its use was an isolated act that he sufficiently explained and fully justified. I emphasize that the law requires ***express renunciation*** in order to lose Philippine citizenship. The term means a renunciation that is made ***distinctly and explicitly and is not left to inference or implication***; ***it is a renunciation manifested by direct and appropriate language, as distinguished from that which is inferred from conduct***. x x x In the present case, other than the use of his US passport in two trips to and from the United States, the record does not bear out any indication, supported by evidence, of Arnado's intention to re-acquire US citizenship. To my mind, in the absence of clear and affirmative acts of re-acquiring US citizenship either by naturalization or by express acts (such as the re-establishment of permanent residency in the United States), Arnado's use of his US passport cannot but be considered an isolated act that did not undo his renunciation of his US citizenship. What he might in fact have done was to violate American law on the use of passports, but this is a matter irrelevant to the present case. Thus, Arnado remains to be a "pure" Filipino citizen and the loss of his Philippine citizenship cannot be presumed or inferred from his isolated act of using his US passport for travel purposes.

5. ID.; ELECTION LAWS; ELIGIBILITY OF CANDIDATES; ALL DOUBTS REGARDING THE CANDIDATE'S ELIGIBILITY SHOULD BE RESOLVED IN HIS FAVOR; CASE AT BAR.— Separately from the issue of Arnado's isolated act of using his US passport, we cannot ignore the fact in a community as small as Kauswagan where the two mayoralty candidates garnered a total of 11,309 votes, Balua's claim of Arnado's foreign citizenship and even the latter's residency status could not be avoided but be live election issues. ***The people of Kauswagan, Lanao del Norte, therefore, made their own ruling when they elected Arnado as their mayor despite the "foreigner" label sought to be pinned on him.*** At this point, even this Court should heed this verdict by resolving all doubts regarding Arnado's eligibility in his favor.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT ESTABLISHED IN CASE AT BAR.— [T]he Comelec *en banc* considered and accepted as its factual finding that Arnado's explanation on the use of his US passport was sufficient justification to conclude that he did not abandon his Oath of Renunciation. This finding is undeniably based on evidence on record as the above citations show. In a Rule 64 petition, whether this conclusion is correct or incorrect is not material for as long as it is made on the basis of evidence on record, and was made within the contemplation of the applicable law. In other words, the Comelec *en banc* properly exercised its discretion in acting on the matter; thus, even if it had erred in its conclusions, any error in reading the evidence and in applying the law was not sufficiently grave to affect the exercise of its jurisdiction. From these perspectives, this Court has no recourse but to dismiss the present petition for failure to show any grave abuse of discretion on the part of the Comelec.

APPEARANCES OF COUNSEL

Rexie Efren A. Bugaring and Associates Law Offices and *Musico Law Office* for petitioner.

The Solicitor General for public respondent.

Tomas O. Cabili and *Rejoice S. Subejano* for Mayor Rommel Arnado.

Federico R. Miranda for Linog G. Balua.

D E C I S I O N

SERENO, *C.J.*:

THE CASE

This is a Petition for *Certiorari* under Rule 64 in conjunction with Rule 65 of the Rules of Court to review the Resolutions of the Commission on Elections (COMELEC). The Resolution[1] in SPA No. 10-109(DC) of the COMELEC First Division dated

[1] *Rollo*, pp. 38-49.

5 October 2010 is being assailed for applying Section 44 of the Local Government Code while the Resolution[2] of the COMELEC *En Banc* dated 2 February 2011 is being questioned for finding that respondent Rommel Arnado *y* Cagoco (respondent Arnado/ Arnado) is solely a Filipino citizen qualified to run for public office despite his continued use of a U.S. passport.

FACTS

Respondent Arnado is a natural born Filipino citizen.[3] However, as a consequence of his subsequent naturalization as a citizen of the United States of America, he lost his Filipino citizenship.

Arnado applied for repatriation under Republic Act (R.A.) No. 9225 before the Consulate General of the Philippines in San Franciso, USA and took the Oath of Allegiance to the Republic of the Philippines on 10 July 2008.[4] On the same day an Order of Approval of his Citizenship Retention and Re-acquisition was issued in his favor.[5]

The aforementioned Oath of Allegiance states:

> I, Rommel Cagoco Arnado, solemnly swear that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.[6]

On 3 April 2009 Arnado again took his Oath of Allegiance to the Republic and executed an Affidavit of Renunciation of his foreign citizenship, which states:

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[2] *Id.* at 50-67.

[3] *Id.* at 229, Exhibit "1-MR", Certificate of Live Birth.

[4] *Id.* at 241, Exhibit "12-MR", Oath of Allegiance.

[5] *Id.* at 239, Exhibit "10-MR", Order of Approval.

[6] *Ibid*, Note 2 and Annex "1" of Duly Verified Answer, *Rollo*, p. 160 and Annex "2" of Memorandum for Respondent, *Rollo*, p. 178.

I, Rommel Cagoco Arnado, do solemnly swear that I absolutely and perpetually renounce all allegiance and fidelity to the UNITED STATES OF AMERICA of which I am a citizen, and I divest myself of full employment of all civil and political rights and privileges of the United States of America.

I solemnly swear that all the foregoing statement is true and correct to the best of my knowledge and belief.[7]

On 30 November 2009, Arnado filed his Certificate of Candidacy for Mayor of Kauswagan, Lanao del Norte, which contains, among others, the following statements:

I am a natural born Filipino citizen / naturalized Filipino citizen.
I am not a permanent resident of, or immigrant to, a foreign country.
I am eligible for the office I seek to be elected to.
I will support and defend the Constitution of the Republic of the Philippines and will maintain true faith and allegiance thereto. I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities.

I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.[8]

On 28 April 2010, respondent Linog C. Balua (Balua), another mayoralty candidate, filed a petition to disqualify Arnado and/or to cancel his certificate of candidacy for municipal mayor of Kauswagan, Lanao del Norte in connection with the 10 May 2010 local and national elections.[9] Respondent Balua contended that Arnado is not a resident of Kauswagan, Lanao del Norte and that he is a foreigner, attaching thereto a certification issued by the Bureau of Immigration dated 23 April 2010 indicating the nationality of Arnado as "USA-American."[10]

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[7] *Ibid,* pp. 160 and 178.

[8] *Id.* at 139, Annex "B" of Petition for Disqualification; *Id.* at 177, Annex "1" Memorandum for Respondent.

[9] *Id.* at 134, Petition to Disqualify Rommel Cagoco Arnado and/or to Cancel his Certificate of Candidacy for Municipal Mayor of Kauswagan, Lanao del Norte in Connection with May 10, 2010 Local and National Elections.

[10] *Id.* at 140, Certification.

To further bolster his claim of Arnado's US citizenship, Balua presented in his Memorandum a computer-generated travel record[11] dated 03 December 2009 indicating that Arnado has been using his US Passport No. 057782700 in entering and departing the Philippines. The said record shows that Arnado left the country on 14 April 2009 and returned on 25 June 2009, and again departed on 29 July 2009, arriving back in the Philippines on 24 November 2009.

Balua likewise presented a certification from the Bureau of Immigration dated 23 April 2010, certifying that the name "Arnado, Rommel Cagoco" appears in the available Computer Database/Passenger manifest/IBM listing on file as of 21 April 2010, with the following pertinent travel records:

DATE OF Arrival	:	01/12/2010
NATIONALITY	:	USA-AMERICAN
PASSPORT	:	057782700
DATE OF Arrival	:	03/23/2010
NATIONALITY	:	USA-AMERICAN
PASSPORT	:	057782700[12]

On 30 April 2010, the COMELEC (First Division) issued an Order[13] requiring the respondent to personally file his answer and memorandum within three (3) days from receipt thereof.

After Arnado failed to answer the petition, Balua moved to declare him in default and to present evidence *ex-parte*.

Neither motion was acted upon, having been overtaken by the 2010 elections where Arnado garnered the highest number of votes and was subsequently proclaimed as the winning candidate for Mayor of Kauswagan, Lanao del Norte.

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[11] *Id.* at 191, Exhibit "A" of Memorandum for Petitioner filed before the Commission on Elections.

[12] *Id.* at 192, Exhibit "C" of Memorandum for Petitioner filed before the Commission on Elections.

[13] Records, pp. 76-77.

It was only after his proclamation that Arnado filed his verified answer, submitting the following documents as evidence:[14]

1. Affidavit of Renunciation and Oath of Allegiance to the Republic of the Philippines dated 03 April 2009;
2. Joint-Affidavit dated 31 May 2010 of Engr. Virgil Seno, Virginia Branzuela, Leoncio Daligdig, and Jessy Corpin, all neighbors of Arnado, attesting that Arnado is a long-time resident of Kauswagan and that he has been conspicuously and continuously residing in his family's ancestral house in Kauswagan;
3. Certification from the *Punong Barangay* of Poblacion, Kauswagan, Lanao del Norte dated 03 June 2010 stating that Arnado is a bona fide resident of his *barangay* and that Arnado went to the United States in 1985 to work and returned to the Philippines in 2009;
4. Certification dated 31 May 2010 from the Municipal Local Government Operations Office of Kauswagan stating that Dr. Maximo P. Arnado, Sr. served as Mayor of Kauswagan, from January 1964 to June 1974 and from 15 February 1979 to 15 April 1986; and
5. Voter Certification issued by the Election Officer of Kauswagan certifying that Arnado has been a registered voter of Kauswagan since 03 April 2009.

THE RULING OF THE COMELEC FIRST DIVISION

Instead of treating the Petition as an action for the cancellation of a certificate of candidacy based on misrepresentation,[15] the COMELEC First Division considered it as one for disqualification. Balua's contention that Arnado is a resident of the United States was dismissed upon the finding that "Balua failed to present any evidence to support his contention,"[16] whereas the First Division still could "not conclude that Arnado failed to meet

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[14] *Rollo*, p. 42, Resolution dated 5 October 2010, penned by Commissioner Rene V. Sarmiento, and concurred in by Commissioner Armando C. Velasco and Gregorio Y. Larrazabal.

[15] *Id.*

[16] *Id.* at 43.

the one-year residency requirement under the Local Government Code."[17]

In the matter of the issue of citizenship, however, the First Division disagreed with Arnado's claim that he is a Filipino citizen.[18]

> We find that although Arnado appears to have substantially complied with the requirements of R.A. No. 9225, Arnado's act of consistently using his US passport after renouncing his US citizenship on 03 April 2009 effectively negated his Affidavit of Renunciation.
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> Arnado's continued use of his US passport is a strong indication that Arnado had no real intention to renounce his US citizenship and that he only executed an Affidavit of Renunciation to enable him to run for office. We cannot turn a blind eye to the glaring inconsistency between Arnado's unexplained use of a US passport six times and his claim that he re-acquired his Philippine citizenship and renounced his US citizenship. As noted by the Supreme Court in the Yu case, "[a] passport is defined as an official document of identity and nationality issued to a person intending to travel or sojourn in foreign countries." Surely, one who truly divested himself of US citizenship would not continue to avail of privileges reserved solely for US nationals.[19]

The dispositive portion of the Resolution rendered by the COMELEC First Division reads:

> **WHEREFORE**, in view of the foregoing, the petition for disqualification and/or to cancel the certificate of candidacy of Rommel C. Arnado is hereby **GRANTED**. Rommel C. Arnado's proclamation as the winning candidate for Municipal Mayor of Kauswagan, Lanao del Nore is hereby **ANNULLED**. Let the order of succession under Section 44 of the Local Government Code of 1991 take effect.[20]

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[17] *Id.* at 44.

[18] *Id.*

[19] *Id.* at 46-47, Resolution dated 5 October 2010.

[20] *Id.* at 48.

The Motion for Reconsideration and the Motion for Intervention

Arnado sought reconsideration of the resolution before the COMELEC *En Banc* on the ground that "the evidence is insufficient to justify the Resolution and that the said Resolution is contrary to law."[21] He raised the following contentions:[22]

1. The finding that he is not a Filipino citizen is not supported by the evidence consisting of his Oath of Allegiance and the Affidavit of Renunciation, which show that he has substantially complied with the requirements of R.A. No. 9225;
2. The use of his US passport subsequent to his renunciation of his American citizenship is not tantamount to a repudiation of his Filipino citizenship, as he did not perform any act to swear allegiance to a country other than the Philippines;
3. He used his US passport only because he was not informed of the issuance of his Philippine passport, and that he used his Philippine passport after he obtained it;
4. Balua's petition to cancel the certificate of candidacy of Arnado was filed out of time, and the First Division's treatment of the petition as one for disqualification constitutes grave abuse of discretion amounting to excess of jurisdiction;[23]
5. He is undoubtedly the people's choice as indicated by his winning the elections;
6. His proclamation as the winning candidate ousted the COMELEC from jurisdiction over the case; and
7. The proper remedy to question his citizenship is through a petition for *quo warranto*, which should have been filed within ten days from his proclamation.

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[21] *Id.* at 214, Amended Motion for Reconsideration.

[22] *Id.* at 193-211, Verified Motion for Reconsideration; *id.* at 212-246, Amended Motion for Reconsideration; *id.* at 247-254, Rejoinder to Petitioner's Comment/Opposition to Respondent's Amended Motion for Reconsideration.

[23] *Id.* at 224, Amended Motion for Reconsideration.

Petitioner Casan Macode Maquiling (Maquiling), another candidate for mayor of Kauswagan, and who garnered the second highest number of votes in the 2010 elections, intervened in the case and filed before the COMELEC *En Banc* a Motion for Reconsideration together with an Opposition to Arnado's Amended Motion for Reconsideration. Maquiling argued that while the First Division correctly disqualified Arnado, the order of succession under Section 44 of the Local Government Code is not applicable in this case. Consequently, he claimed that the cancellation of Arnado's candidacy and the nullification of his proclamation, Maquiling, as the legitimate candidate who obtained the highest number of lawful votes, should be proclaimed as the winner.

Maquiling simultaneously filed his Memorandum with his Motion for Intervention and his Motion for Reconsideration. Arnado opposed all motions filed by Maquiling, claiming that intervention is prohibited after a decision has already been rendered, and that as a second-placer, Maquiling undoubtedly lost the elections and thus does not stand to be prejudiced or benefitted by the final adjudication of the case.

RULING OF THE COMELEC *EN BANC*

In its Resolution of 02 February 2011, the COMELEC *En Banc* held that under Section 6 of Republic Act No. 6646, the Commission "shall continue with the trial and hearing of the action, inquiry or protest even after the proclamation of the candidate whose qualifications for office is questioned."

As to Maquiling's intervention, the COMELEC *En Banc* also cited Section 6 of R.A. No. 6646 which allows intervention in proceedings for disqualification even after elections if no final judgment has been rendered, but went on further to say that Maquiling, as the second placer, would not be prejudiced by the outcome of the case as it agrees with the dispositive portion of the Resolution of the First Division allowing the order of succession under Section 44 of the Local Government Code to take effect.

The COMELEC *En Banc* agreed with the treatment by the First Division of the petition as one for disqualification, and ruled that the petition was filed well within the period prescribed by law,[24] having been filed on 28 April 2010, which is not later than 11 May 2010, the date of proclamation.

However, the COMELEC *En Banc* reversed and set aside the ruling of the First Division and granted Arnado's Motion for Reconsideration, on the following premises:

First:

By renouncing his US citizenship as imposed by R.A. No. 9225, the respondent embraced his Philippine citizenship as though he never became a citizen of another country. It was at that time, April 3, 2009, that the respondent became a pure Philippine Citizen again.

x x x x x x x x x

The use of a US passport […] does not operate to revert back his status as a dual citizen prior to his renunciation as there is no law saying such. More succinctly, the use of a US passport does not operate to "un-renounce" what he has earlier on renounced. The First Division's reliance in the case of *In Re: Petition for Habeas Corpus of Willy Yu v. Defensor-Santiago, et al.* is misplaced. The petitioner in the said case is a naturalized citizen who, after taking his oath as a naturalized Filipino, applied for the renewal of his Portuguese passport. Strict policy is maintained in the conduct of citizens who are not natural born, who acquire their citizenship by choice, thus discarding their original citizenship. The Philippine State expects strict conduct of allegiance to those who choose to be its citizens. In the present case, respondent is not a naturalized citizen but a natural born citizen who chose greener pastures by working abroad and then decided to repatriate to supposedly help in the progress of Kauswagan. He did not apply for a US passport after

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[24] A verified petition to disqualify a candidate pursuant to Sec. 68 of the OEC and the verified petition to disqualify a candidate for lack of qualifications or possessing some grounds for disqualification may be filed on any day after the last day for filing of certificates of candidacy but not later than the date of proclamation. (Sec. 4.B.1. COMELEC Resolution No. 8696).

his renunciation. Thus the mentioned case is not on all fours with the case at bar.

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The respondent presented a plausible explanation as to the use of his US passport. Although he applied for a Philippine passport, the passport was only issued on June 18, 2009. However, he was not notified of the issuance of his Philippine passport so that he was actually able to get it about three (3) months later. Yet as soon as he was in possession of his Philippine passport, the respondent already used the same in his subsequent travels abroad. This fact is proven by the respondent's submission of a certified true copy of his passport showing that he used the same for his travels on the following dates: January 31, 2010, April 16, 2010, May 20, 2010, January 12, 2010, March 31, 2010 and June 4, 2010. This then shows that the use of the US passport was because to his knowledge, his Philippine passport was not yet issued to him for his use. As probably pressing needs might be undertaken, the respondent used whatever is within his control during that time.[25]

In his Separate Concurring Opinion, COMELEC Chairman Sixto Brillantes cited that the use of foreign passport is not one of the grounds provided for under Section 1 of Commonwealth Act No. 63 through which Philippine citizenship may be lost.

"[T]he application of the more assimilative *principle of continuity of citizenship* is more appropriate in this case. Under said principle, once a person becomes a citizen, either by birth or naturalization, it is assumed that he desires to continue to be a citizen, and this assumption stands until he voluntarily denationalizes or expatriates himself. Thus, in the instant case respondent after reacquiring his Philippine citizenship should be presumed to have remained a Filipino despite his use of his American passport in the absence of clear, unequivocal and competent proof of expatriation. Accordingly, all doubts should be resolved in favor of retention of citizenship."[26]

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[25] *Rollo*, pp. 64-66, COMELEC *En Banc* Resolution dated 2 February 2011.

[26] *Id.* at 69, Separate Concurring Opinion.

On the other hand, Commissioner Rene V. Sarmiento dissented, thus:

[R]espondent evidently failed to prove that he truly and wholeheartedly abandoned his allegiance to the United States. The latter's continued use of his US passport and enjoyment of all the privileges of a US citizen despite his previous renunciation of the afore-mention[ed] citizenship runs contrary to his declaration that he chose to retain only his Philippine citizenship. Respondent's submission with the twin requirements was obviously only for the purpose of complying with the requirements for running for the mayoralty post in connection with the May 10, 2010 Automated National and Local Elections.

Qualifications for elective office, such as citizenship, are continuing requirements; once any of them is lost during his incumbency, title to the office itself is deemed forfeited. If a candidate is not a citizen at the time he ran for office or if he lost his citizenship after his election to office, he is disqualified to serve as such. Neither does the fact that respondent obtained the plurality of votes for the mayoralty post cure the latter's failure to comply with the qualification requirements regarding his citizenship.

Since a disqualified candidate is no candidate at all in the eyes of the law, his having received the highest number of votes does not validate his election. It has been held that where a petition for disqualification was filed before election against a candidate but was adversely resolved against him after election, his having obtained the highest number of votes did not make his election valid. His ouster from office does not violate the principle of *vox populi suprema est lex* because the application of the constitutional and statutory provisions on disqualification is not a matter of popularity. To apply it is to breath[e] life to the sovereign will of the people who expressed it when they ratified the Constitution and when they elected their representatives who enacted the law.[27]

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[27] *Id.* at 72-73, Dissenting Opinion of Commissioner Rene V. Sarmiento, *citing* the cases of *Torayno, Sr. v. COMELEC*, 337 SCRA 574 [2000]; *Santos v. COMELEC*, 103 SCRA 628 [1981]; *Sanchez v. Del Rosario*, 1 SCRA 1102 [1961]; and *Reyes v. COMELEC*, 97 SCRA 500 [1980].

THE PETITION BEFORE THE COURT

Maquiling filed the instant petition questioning the propriety of declaring Arnado qualified to run for public office despite his continued use of a US passport, and praying that Maquiling be proclaimed as the winner in the 2010 mayoralty race in Kauswagan, Lanao del Norte.

Ascribing both grave abuse of discretion and reversible error on the part of the COMELEC *En Banc* for ruling that Arnado is a Filipino citizen despite his continued use of a US passport, Maquiling now seeks to reverse the finding of the COMELEC *En Banc* that Arnado is qualified to run for public office.

Corollary to his plea to reverse the ruling of the COMELEC *En Banc* or to affirm the First Division's disqualification of Arnado, Maquiling also seeks the review of the applicability of Section 44 of the Local Government Code, claiming that the COMELEC committed reversible error in ruling that "the succession of the vice mayor in case the respondent is disqualified is in order."

ISSUES

There are three questions posed by the parties before this Court which will be addressed *seriatim* as the subsequent questions hinge on the result of the first.

The first question is whether or not intervention is allowed in a disqualification case.

The second question is whether or not the use of a foreign passport after renouncing foreign citizenship amounts to undoing a renunciation earlier made.

A better framing of the question though should be whether or not the use of a foreign passport after renouncing foreign citizenship affects one's qualifications to run for public office.

The third question is whether or not the rule on succession in the Local Government Code is applicable to this case.

OUR RULING

Intervention of a rival candidate in a disqualification case is proper when there has not yet been any proclamation of the winner.

Petitioner Casan Macode Maquiling intervened at the stage when respondent Arnado filed a Motion for Reconsideration of the First Division Resolution before the COMELEC *En Banc*. As the candidate who garnered the second highest number of votes, Maquiling contends that he has an interest in the disqualification case filed against Arnado, considering that in the event the latter is disqualified, the votes cast for him should be considered stray and the second-placer should be proclaimed as the winner in the elections.

It must be emphasized that while the original petition before the COMELEC is one for cancellation of the certificate of candidacy and / or disqualification, the COMELEC First Division and the COMELEC *En Banc* correctly treated the petition as one for disqualification.

The effect of a disqualification case is enunciated in Section 6 of R.A. No. 6646:

> Sec. 6. Effect of Disqualification Case. - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Mercado v. Manzano[28] clarified the right of intervention in a disqualification case. In that case, the Court said:

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[28] 367 Phil. 132 (1999).

That petitioner had a right to intervene at that stage of the proceedings for the disqualification against private respondent is clear from Section 6 of R.A. No. 6646, otherwise known as the Electoral Reforms Law of 1987, which provides: Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of guilt is strong. Under this provision, intervention may be allowed in proceedings for disqualification even after election if there has yet been no final judgment rendered.[29]

Clearly then, Maquiling has the right to intervene in the case. The fact that the COMELEC *En Banc* has already ruled that Maquiling has not shown that the requisites for the exemption to the second-placer rule set forth in *Sinsuat v. COMELEC*[30] are present and therefore would not be prejudiced by the outcome of the case, does not deprive Maquiling of the right to elevate the matter before this Court.

Arnado's claim that the main case has attained finality as the original petitioner and respondents therein have not appealed the decision of the COMELEC En Banc, cannot be sustained. The elevation of the case by the intervenor prevents it from attaining finality. It is only after this Court has ruled upon the issues raised in this instant petition that the disqualification case originally filed by Balua against Arnado will attain finality.

The use of foreign passport after renouncing one's foreign citizenship is a positive and voluntary act of representation as to one's nationality and citizenship; it does not divest Filipino citizenship

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[29] *Id.* at 142-143.

[30] G.R. No. 105919, 6 August 1992, 212 SCRA 309.

regained by repatriation but it recants the Oath of Renunciation required to qualify one to run for an elective position.

Section 5(2) of The Citizenship Retention and Re-acquisition Act of 2003 provides:

> Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
>
> x x x x x x x x x
>
> (2)Those seeking elective public in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath. x x x[31]

Rommel Arnado took all the necessary steps to qualify to run for a public office. He took the Oath of Allegiance and renounced his foreign citizenship. There is no question that after performing these twin requirements required under Section 5(2) of R.A. No. 9225 or the Citizenship Retention and Re-acquisition Act of 2003, he became eligible to run for public office.

Indeed, Arnado took the Oath of Allegiance not just only once but twice: first, on 10 July 2008 when he applied for repatriation before the Consulate General of the Philippines in San Francisco, USA, and again on 03 April 2009 simultaneous with the execution of his Affidavit of Renunciation. By taking the Oath of Allegiance to the Republic, Arnado re-acquired his Philippine citizenship. At the time, however, he likewise possessed American citizenship. Arnado had therefore become a dual citizen.

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[31] Section 5(2) of R.A. No. 9225.

After reacquiring his Philippine citizenship, Arnado renounced his American citizenship by executing an Affidavit of Renunciation, thus completing the requirements for eligibility to run for public office.

By renouncing his foreign citizenship, he was deemed to be solely a Filipino citizen, regardless of the effect of such renunciation under the laws of the foreign country.[32]

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[32] *See* excerpts of deliberations of Congress reproduced in *AASJS v. Datumanong*, G.R. No. 160869, 11 May 2007, 523 SCRA 108.

In resolving the aforecited issues in this case, resort to the deliberations of Congress is necessary to determine the intent of the legislative branch in drafting the assailed law. During the deliberations, the issue of whether Rep. Act No. 9225 would allow dual allegiance had in fact been the subject of debate. The record of the legislative deliberations reveals the following:

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Pursuing his point, Rep. Dilangalen noted that under the measure, two situations exist — the retention of foreign citizenship, and the reacquisition of Philippine citizenship. In this case, he observed that there are two citizenships and therefore, two allegiances. He pointed out that under the Constitution, dual allegiance is inimical to public interest. He thereafter asked whether with the creation of dual allegiance by reason of retention of foreign citizenship and the reacquisition of Philippine citizenship, there will now be a violation of the Constitution.

Rep. Locsin underscored that the measure does not seek to address the constitutional injunction on dual allegiance as inimical to public interest. **He said that the proposed law aims to facilitate the reacquisition of Philippine** citizenship **by speedy means. However, he said that in one sense, it addresses the problem of** dual citizenship **by requiring the taking of an oath. He explained that the problem of** dual citizenship **is transferred from the Philippines to the foreign country because the latest oath that will be taken by the former Filipino is one of allegiance to the Philippines and not to the United States, as the case may be.** He added that this is a matter which the Philippine government will have no concern and competence over. Rep. Dilangalen asked why this will no longer be the country's concern, when dual allegiance is involved.

Rep. Locsin clarified that this was precisely his objection to the original version of the bill, which did not require an oath of allegiance. **Since the measure now requires this oath, the problem of** dual **allegiance is transferred from the Philippines to the foreign country concerned**, he explained.

x x x x x x x x x

However, this legal presumption does not operate permanently and is open to attack when, after renouncing the foreign citizenship, the citizen performs positive acts showing his continued possession of a foreign citizenship.[33]

Rep. Dilangalen asked whether in the particular case, the person did not denounce his foreign citizenship and therefore still owes allegiance tothe foreign government, and at the same time, owes his allegiance to the Philippine government, such that there is now a case of dual citizenship and dual allegiance.

Rep. Locsin clarified that **by swearing to the supreme authority of the Republic, the person implicitly renounces his foreign** citizenship. However, he said that this is not a matter that he wishes to address in Congress because he is not a member of a foreign parliament but a Member of the House.

x x x x x x x x x

Rep. Locsin replied that it is imperative that those who have dual allegiance contrary to national interest should be dealt with by law. However, he said that the dual allegiance problem is not addressed in the bill. He then cited the Declaration of Policy in the bill which states that "It is hereby declared the policy of the State that all citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship under the conditions of this Act." He stressed that **what the bill does is recognize Philippine** citizenship **but says nothing about the other** citizenship.

Rep. Locsin further pointed out that the problem of dual allegiance is created wherein a natural-born citizen of the Philippines takes an oath of allegiance to another country and in that oath says that he abjures and absolutely renounces all allegiance to his country of origin and swears allegiance to that foreign country. The original Bill had left it at this stage, he explained. **In the present measure, he clarified, a person is required to take an oath and the last he utters is one of allegiance to the country. He then said that the problem of** dual **allegiance is no longer the problem of the Philippines but of the other foreign country**. (Emphasis supplied)

[33] *See* Discussion of Senators Enrile and Pimentel on Sec. 40(d) of the Local Government Code, reproduced in *Cordora v. COMELEC*, G.R. No. 176947, 19 February 2009, 580 SCRA 12.

By electing Philippine citizenship, such candidates at the same time forswear allegiance to the other country of which they are also citizens and thereby terminate their status as dual citizens. It may be that, from the point of view of the foreign state and of its laws, such an individual

has not effectively renounced his foreign citizenship. That is of no momentas the following discussion on §40(d) between Senators Enrile and Pimentel clearly shows:

SENATOR ENRILE:

Mr. President, I would like to ask clarification of line 41, page 17: "Any person with dual citizenship " is disqualified to run for any elective local position. Under the present Constitution, Mr. President, someone whose mother is a citizen of the Philippines but his father is a foreigner is a natural-born citizen of the Republic. There is no requirement that such a natural-born citizen, upon reaching the age of majority, must elect or give up Philippine citizenship.

On the assumption that this person would carry two passports, one belonging to the country of his or her father and one belonging to the Republic of the Philippines, may such a situation disqualify the person to run for a local government position?

SENATOR PIMENTEL:

To my mind, Mr. President, it only means that at the moment when he would want to run for public office, he has to repudiate one of his citizenships.

SENATOR ENRILE:

Suppose he carries only a Philippine passport but the country of origin or the country of the father claims that person, nevertheless, as a citizen? No one can renounce. There are such countries in the world.

SENATOR PIMENTEL:

Well, the very fact that he is running for public office would, in effect, be an election for him of his desire to be considered a Filipino citizen.

SENATOR ENRILE:

But, precisely, Mr. President, the Constitution does not require an election. Under the Constitution, a person whose mother is a citizen of the Philippines is, at birth, a citizen without any overt act to claim the citizenship.

SENATOR PIMENTEL:

Yes. What we are saying, Mr. President, is: Under the Gentleman's example, if he does not renounce his other citizenship, then he is opening himself to question. So, if he is really interested to run, the first thing he should do is to say in the Certificate of Candidacy that: "I am a Filipino citizen, and I have only one citizenship."

SENATOR ENRILE:

But we are talking from the viewpoint of Philippine law, Mr. President. He will always have one citizenship, and that is the citizenship invested upon him or her in the Constitution of the Republic.

Arnado himself subjected the issue of his citizenship to attack when, after renouncing his foreign citizenship, he continued to use his US passport to travel in and out of the country before filing his certificate of candidacy on 30 November 2009. The pivotal question to determine is whether he was solely and exclusively a Filipino citizen at the time he filed his certificate of candidacy, thereby rendering him eligible to run for public office.

Between 03 April 2009, the date he renounced his foreign citizenship, and 30 November 2009, the date he filed his COC, he used his US passport four times, actions that run counter to the affidavit of renunciation he had earlier executed. By using his foreign passport, Arnado positively and voluntarily represented himself as an American, in effect declaring before immigration authorities of both countries that he is an American citizen, with all attendant rights and privileges granted by the United States of America.

The renunciation of foreign citizenship is not a hollow oath that can simply be professed at any time, only to be violated the next day. It requires an absolute and perpetual renunciation of the foreign citizenship and a full divestment of all civil and political rights granted by the foreign country which granted the citizenship.

Mercado v. Manzano[34] already hinted at this situation when the Court declared:

> His declarations will be taken upon the faith that he will fulfill his undertaking made under oath. Should he betray that trust, there are enough sanctions for declaring the loss of his Philippine citizenship through expatriation in appropriate proceedings. In *Yu v. Defensor-Santiago*, we sustained the denial of entry into the country of petitioner on the ground that, after taking his oath as a naturalized

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SENATOR PIMENTEL:

That is true, Mr. President. But if he exercises acts that will prove that he also acknowledges other citizenships, then he will probably fall under this disqualification.

[34] *Supra* note 28 at 153.

citizen, he applied for the renewal of his Portuguese passport and declared in commercial documents executed abroad that he was a Portuguese national. A similar sanction can be taken against anyone who, in electing Philippine citizenship, renounces his foreign nationality, but subsequently does some act constituting renunciation of his Philippine citizenship.

While the act of using a foreign passport is not one of the acts enumerated in Commonwealth Act No. 63 constituting renunciation and loss of Philippine citizenship,[35] it is nevertheless an act which repudiates the very oath of renunciation required for a former Filipino citizen who is also a citizen of another country to be qualified to run for a local elective position.

When Arnado used his US passport on 14 April 2009, or just eleven days after he renounced his American citizenship, he recanted his Oath of Renunciation[36] that he "absolutely and perpetually renounce(s) all allegiance and fidelity to the UNITED STATES OF AMERICA"[37] and that he "divest(s) [him]self of full employment of all civil and political rights and privileges of the United States of America."[38]

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[35] Under Commonwealth Act No. 63, a Filipino citizen may lose his citizenship:

(1) By naturalization in a foreign country;

(2) By express renunciation of citizenship;

(3) By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more;

(4) By accepting commission in the military, naval or air service of a foreign country;

(5) By cancellation of the certificate of naturalization;

(6) By having been declared by competent authority, a deserter of the Philippine armed forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted: and

(7) In case of a woman, upon her marriage, to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality.

[36] *See* Note 7.

[37] *Id.*

[38] *Id.*

We agree with the COMELEC *En Banc* that such act of using a foreign passport does not divest Arnado of his Filipino citizenship, which he acquired by repatriation. However, by representing himself as an American citizen, Arnado voluntarily and effectively reverted to his earlier status as a dual citizen. Such reversion was not retroactive; it took place the instant Arnado represented himself as an American citizen by using his US passport.

This act of using a foreign passport after renouncing one's foreign citizenship is fatal to Arnado's bid for public office, as it effectively imposed on him a disqualification to run for an elective local position.

Arnado's category of dual citizenship is that by which foreign citizenship is acquired through a positive act of applying for naturalization. This is distinct from those considered dual citizens by virtue of birth, who are not required by law to take the oath of renunciation as the mere filing of the certificate of candidacy already carries with it an implied renunciation of foreign citizenship.[39] Dual citizens by naturalization, on the other hand, are required to take not only the Oath of Allegiance to the Republic of the Philippines but also to personally renounce foreign citizenship in order to qualify as a candidate for public office.

By the time he filed his certificate of candidacy on 30 November 2009, Arnado was a dual citizen enjoying the rights and privileges of Filipino and American citizenship. He was qualified to vote, but by the express disqualification under Section 40(d) of the Local Government Code,[40] he was not qualified to run for a local elective position.

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[39] See *Cordora v. COMELEC*, G.R. No. 176947, 19 February 2009, 580 SCRA 12.

[40] Sec. 40. *Disqualifications.* - The following persons are disqualified from running for any elective local position:

x x x x x x x x x

(d) Those with dual citizenship; x x x.

In effect, Arnado was solely and exclusively a Filipino citizen only for a period of eleven days, or from 3 April 2009 until 14 April 2009, on which date he first used his American passport after renouncing his American citizenship.

This Court has previously ruled that:

> Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged. x x x.[41]

The citizenship requirement for elective public office is a continuing one. It must be possessed not just at the time of the renunciation of the foreign citizenship but continuously. Any act which violates the oath of renunciation opens the citizenship issue to attack.

We agree with the pronouncement of the COMELEC First Division that "Arnado's act of consistently using his US passport effectively negated his "Affidavit of Renunciation."[42] This does not mean, that he failed to comply with the twin requirements under R.A. No. 9225, for he in fact did. It was *after* complying with the requirements that he performed positive acts which effectively disqualified him from running for an elective public office pursuant to Section 40(d) of the Local Government Code of 1991.

The purpose of the Local Government Code in disqualifying dual citizens from running for any elective public office would be thwarted if we were to allow a person who has earlier renounced his foreign citizenship, but who subsequently represents himself as a foreign citizen, to hold any public office.

Arnado justifies the continued use of his US passport with the explanation that he was not notified of the issuance of his Philippine passport on 18 June 2009, as a result of which he

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[41] *Fivaldo v. COMELEC*, 255 Phil. 934, 944 (1989).

[42] *Rollo*, p. 46, Resolution dated 5 October 2010.

was only able to obtain his Philippine passport three (3) months later.[43]

The COMELEC *En Banc* differentiated Arnado from Willy Yu, the Portuguese national who sought naturalization as a Filipino citizen and later applied for the renewal of his Portuguese passport. That Arnado did not apply for a US passport after his renunciation does not make his use of a US passport less of an act that violated the Oath of Renunciation he took. It was still a positive act of representation as a US citizen before the immigration officials of this country.

The COMELEC, in ruling favorably for Arnado, stated "Yet, as soon as he was in possession of his Philippine passport, the respondent already used the same in his subsequent travels abroad."[44] We cannot agree with the COMELEC. Three months from June is September. If indeed, Arnado used his Philippine passport as soon as he was in possession of it, he would not have used his US passport on 24 November 2009.

Besides, Arnado's subsequent use of his Philippine passport does not correct the fact that after he renounced his foreign citizenship and prior to filing his certificate of candidacy, he used his US passport. In the same way that the use of his foreign passport does not undo his Oath of Renunciation, his subsequent use of his Philippine passport does not undo his earlier use of his US passport.

Citizenship is not a matter of convenience. It is a badge of identity that comes with attendant civil and political rights accorded by the state to its citizens. It likewise demands the concomitant duty to maintain allegiance to one's flag and country. While those who acquire dual citizenship by choice are afforded the right of suffrage, those who seek election or appointment to public office are required to renounce their foreign citizenship to be deserving of the public trust. Holding public office demands full and undivided allegiance to the Republic and to no other.

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[43] *Id.* at 219, Amended Motion for Reconsideration.

[44] *Id.* at 66, Resolution dated 02 February 2011.

We therefore hold that Arnado, by using his US passport after renouncing his American citizenship, has recanted the same Oath of Renunciation he took. Section 40(d) of the Local Government Code applies to his situation. He is disqualified not only from holding the public office but even from becoming a candidate in the May 2010 elections.

We now resolve the next issue.

Resolving the third issue necessitates revisiting *Topacio v. Paredes*[45] which is the jurisprudential spring of the principle that a second-placer cannot be proclaimed as the winner in an election contest. This doctrine must be re-examined and its soundness once again put to the test to address the ever-recurring issue that a second-placer who loses to an ineligible candidate cannot be proclaimed as the winner in the elections.

The facts of the case are as follows:

> On June 4, 1912, a general election was held in the town of Imus, Province of Cavite, to fill the office of municipal president. The petitioner, Felipe Topacio, and the respondent, Maximo Abad, were opposing candidates for that office. Topacio received 430 votes, and Abad 281. Abad contested the election upon the sole ground that Topacio was ineligible in that he was reelected the second time to the office of the municipal president on June 4, 1912, without the four years required by Act No. 2045 having intervened.[46]

Abad thus questioned the eligibility of *Topacio* on the basis of a statutory prohibition for seeking a second re-election absent the four year interruption.

The often-quoted phrase in *Topacio v. Paredes* is that "the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots."[47]

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[45] 23 Phil. 238 (1912).

[46] *Id.* at 240.

[47] *Id.* at 255.

This phrase is not even the *ratio decidendi*; it is a mere *obiter dictum*. The Court was comparing "the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the elections x x x [with] that produced by declaring a person ineligible to hold such an office."

The complete sentence where the phrase is found is part of a comparison and contrast between the two situations, thus:

> Again, the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the elections is quite different from that produced by declaring a person ineligible to hold such an office. In the former case the court, after an examination of the ballots may find that some other person than the candidate declared to have received a plura[l]ity by the board of canvassers actually received the greater number of votes, in which case the court issues its *mandamus* to the board of canvassers to correct the returns accordingly; or it may find that the manner of holding the election and the returns are so tainted with fraud or illegality that it cannot be determined who received a [plurality] of the legally cast ballots. In the latter case, no question as to the correctness of the returns or the manner of casting and counting the ballots is before the deciding power, and generally the only result can be that the election fails entirely. In the former, we have a contest in the strict sense of the word, because of the opposing parties are striving for supremacy. If it be found that the successful candidate (according to the board of canvassers) obtained a plurality in an illegal manner, and that another candidate was the *real victor*, the former must retire in favor of the latter. In the other case, there is not, strictly speaking, a contest, as **the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots.** In the one case the question is as to who received a plurality of the legally cast ballots; in the other, the question is confined to the personal character and circumstances of a single individual.[48] (Emphasis supplied)

Note that the sentence where the phrase is found starts with "In the other case, there is not, strictly speaking, a contest" in

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[48] *Id.* at 254-255.

contrast to the earlier statement, "In the former, we have a contest in the strict sense of the word, because of the opposing parties are striving for supremacy."

The Court in *Topacio v. Paredes* cannot be said to have held that "**the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots."**

A proper reading of the case reveals that the ruling therein is that since the Court of First Instance is without jurisdiction to try a disqualification case based on the eligibility of the person who obtained the highest number of votes in the election, its jurisdiction being confined "to determine which of the contestants has been duly elected" the judge exceeded his jurisdiction when he "declared that no one had been legally elected president of the municipality of Imus at the general election held in that town on 4 June 1912" where "the only question raised was whether or not Topacio was eligible to be elected and to hold the office of municipal president."

The Court did not rule that *Topacio* was disqualified and that Abad as the second placer cannot be proclaimed in his stead. The Court therein ruled:

> For the foregoing reasons, we are of the opinion and so hold that the respondent judge exceeded his jurisdiction in declaring *in those proceedings* that no one was elect[ed] municipal president of the municipality of Imus at the last general election; and that said order and all subsequent proceedings based thereon are null and void and of no effect; and, although this decision is rendered on respondents' answer to the order to show cause, unless respondents raised some new and additional issues, let judgment be entered accordingly in 5 days, without costs. So ordered.[49]

On closer scrutiny, the phrase relied upon by a host of decisions does not even have a legal basis to stand on. It was a mere pronouncement of the Court comparing one process with another

[49] *Id.* at 258.

and explaining the effects thereof. As an independent statement, it is even illogical.

Let us examine the statement:

"x x x t**he wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots."**

What prevents the transfer of the wreath of victory from the ineligible candidate to another candidate?

When the issue being decided upon by the Court is the eligibility of the one receiving a plurality of the legally cast ballots and ineligibility is thereafter established, what stops the Court from adjudging another eligible candidate who received the next highest number of votes as the winner and bestowing upon him that "wreath?"

An ineligible candidate who receives the highest number of votes is a wrongful winner. By express legal mandate, he could not even have been a candidate in the first place, but by virtue of the lack of material time or any other intervening circumstances, his ineligibility might not have been passed upon prior to election date. Consequently, he may have had the opportunity to hold himself out to the electorate as a legitimate and duly qualified candidate. However, notwithstanding the outcome of the elections, his ineligibility as a candidate remains unchanged. Ineligibility does not only pertain to his qualifications as a candidate but necessarily affects his right to hold public office. The number of ballots cast in his favor cannot cure the defect of failure to qualify with the substantive legal requirements of eligibility to run for public office.

The popular vote does not cure the ineligibility of a candidate.

The ballot cannot override the constitutional and statutory requirements for qualifications and disqualifications of candidates. When the law requires certain qualifications to be possessed

or that certain disqualifications be not possessed by persons desiring to serve as elective public officials, those qualifications must be met before one even becomes a candidate. When a person who is not qualified is voted for and eventually garners the highest number of votes, even the will of the electorate expressed through the ballot cannot cure the defect in the qualifications of the candidate. To rule otherwise is to trample upon and rent asunder the very law that sets forth the qualifications and disqualifications of candidates. We might as well write off our election laws if the voice of the electorate is the sole determinant of who should be proclaimed worthy to occupy elective positions in our republic.

This has been, in fact, already laid down by the Court in *Frivaldo v. COMELEC*[50] when we pronounced:

> x x x. **The fact that he was elected by the people of Sorsogon does not excuse this patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed, as in this case, that the candidate was qualified.** Obviously, this rule requires strict application when the deficiency is lack of citizenship. If a person seeks to serve in the Republic of the Philippines, he must owe his total loyalty to this country only, abjuring and renouncing all fealty and fidelity to any other state.[51] (Emphasis supplied)

This issue has also been jurisprudentially clarified in *Velasco v. COMELEC*[52] where the Court ruled that the ruling in *Quizon* and *Saya-ang* cannot be interpreted without qualifications lest "Election victory x x x becomes a magic formula to bypass election eligibility requirements."[53]

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[50] *Supra* note 41.

[51] *Id.* at 944-945.

[52] G.R. No. 180051, 24 December 2008, 575 SCRA 590, 614-615.

[53] *Id.* at 615, citing *Quizon v. COMELEC*, G.R. NO. 177927, 15 February 2008, 545 SCRA 635, *Saya-ang v. COMELEC*, 462 Phil. 373 (2003).

[W]e have ruled in the past that a candidate's victory in the election may be considered a sufficient basis to rule in favor of the candidate sought to be disqualified if the main issue involves defects in the candidate's certificate of candidacy. We said that *while provisions relating to certificates of candidacy are mandatory in terms, it is an established rule of interpretation as regards election laws, that mandatory provisions requiring certain steps before elections will be construed as directory after the elections, to give effect to the will of the people*. We so ruled in *Quizon v. COMELEC* and *Sayaang v. COMELEC:*

The present case perhaps presents the proper time and opportunity to fine-tune our above ruling. We say this with the realization that a blanket and unqualified reading and application of this ruling can be fraught with dangerous significance for the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information to make an informed choice about a candidate's eligibility and fitness for office.

The first requirement that may fall when an unqualified reading is made is Section 39 of the LGC which specifies the basic qualifications of local government officials. Equally susceptive of being rendered toothless is Section 74 of the OEC that sets out what should be stated in a COC. Section 78 may likewise be emasculated as mere delay in the resolution of the petition to cancel or deny due course to a COC can render a Section 78 petition useless if a candidate with false COC data wins. To state the obvious, candidates may risk falsifying their COC qualifications if they know that an election victory will cure any defect that their COCs may have. Election victory then becomes a magic formula to bypass election eligibility requirements. (Citations omitted)

What will stop an otherwise disqualified individual from filing a seemingly valid COC, concealing any disqualification, and employing every strategy to delay any disqualification case filed against him so he can submit himself to the electorate and win, if winning the election will guarantee a disregard of constitutional and statutory provisions on qualifications and disqualifications of candidates?

It is imperative to safeguard the expression of the sovereign voice through the ballot by ensuring that its exercise respects the rule of law. To allow the sovereign voice spoken through the ballot to trump constitutional and statutory provisions on qualifications and disqualifications of candidates is not democracy or republicanism. It is electoral anarchy. When set rules are disregarded and only the electorate's voice spoken through the ballot is made to matter in the end, it precisely serves as an open invitation for electoral anarchy to set in.

Maquiling is not a second-placer as he obtained the highest number of votes from among the qualified candidates.

With Arnado's disqualification, Maquiling then becomes the winner in the election as he obtained the highest number of votes from among the qualified candidates.

We have ruled in the recent cases of *Aratea v. COMELEC*[54] and *Jalosjos v. COMELEC*[55] that a void COC cannot produce any legal effect. Thus, the votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election.

Even when the votes for the ineligible candidate are disregarded, the will of the electorate is still respected, and even more so. The votes cast in favor of an ineligible candidate do not constitute the sole and total expression of the sovereign voice. The votes cast in favor of eligible and legitimate candidates form part of that voice and must also be respected.

As in any contest, elections are governed by rules that determine the qualifications and disqualifications of those who are allowed to participate as players. When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any

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[54] G. R. No. 195229, 9 October 2012.

[55] G.R. Nos. 193237/193536, 9 October 2012.

of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.

There is no need to apply the rule cited in *Labo v. COMELEC*[56] that when the voters are well aware within the realm of notoriety of a candidate's disqualification and still cast their votes in favor of said candidate, then the eligible candidate obtaining the next higher number of votes may be deemed elected. That rule is also a mere *obiter* that further complicated the rules affecting qualified candidates who placed second to ineligible ones.

The electorate's awareness of the candidate's disqualification is not a prerequisite for the disqualification to attach to the candidate. The very existence of a disqualifying circumstance makes the candidate ineligible. Knowledge by the electorate of a candidate's disqualification is not necessary before a qualified candidate who placed second to a disqualified one can be proclaimed as the winner. The second-placer in the vote count is actually the first-placer among the qualified candidates.

That the disqualified candidate has already been proclaimed and has assumed office is of no moment. The subsequent disqualification based on a substantive ground that existed prior to the filing of the certificate of candidacy voids not only the COC but also the proclamation.

Section 6 of R.A. No. 6646 provides:

Section 6. *Effect of Disqualification Case.* - Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

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[56] G.R. No. 105111, 3 July 1992, 211 SCRA 297, 312.

There was no chance for Arnado's proclamation to be suspended under this rule because Arnado failed to file his answer to the petition seeking his disqualification. Arnado only filed his Answer on 15 June 2010, long after the elections and after he was already proclaimed as the winner.

The disqualifying circumstance surrounding Arnado's candidacy involves his citizenship. It does not involve the commission of election offenses as provided for in the first sentence of Section 68 of the Omnibus Election Code, the effect of which is to disqualify the individual from continuing as a candidate, or if he has already been elected, from holding the office.

The disqualifying circumstance affecting Arnado is his citizenship. As earlier discussed, Arnado was both a Filipino and an American citizen when he filed his certificate of candidacy. He was a dual citizen disqualified to run for public office based on Section 40(d) of the Local Government Code.

Section 40 starts with the statement "The following persons are disqualified from running for any elective local position." The prohibition serves as a bar against the individuals who fall under any of the enumeration from participating as candidates in the election.

With Arnado being barred from even becoming a candidate, his certificate of candidacy is thus rendered void from the beginning. It could not have produced any other legal effect except that Arnado rendered it impossible to effect his disqualification prior to the elections because he filed his answer to the petition when the elections were conducted already and he was already proclaimed the winner.

To hold that such proclamation is valid is to negate the prohibitory character of the disqualification which Arnado possessed even prior to the filing of the certificate of candidacy. The affirmation of Arnado's disqualification, although made long after the elections, reaches back to the filing of the certificate

of candidacy. Arnado is declared to be not a candidate at all in the May 2010 elections.

Arnado being a non-candidate, the votes cast in his favor should not have been counted. This leaves Maquiling as the qualified candidate who obtained the highest number of votes. Therefore, the rule on succession under the Local Government Code will not apply.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Resolution of the COMELEC *En Banc* dated 2 February 2011 is hereby **ANNULLED** and **SET ASIDE.** Respondent **ROMMEL ARNADO *y* CAGOCO** is disqualified from running for any local elective position. **CASAN MACODE MAQUILING** is hereby **DECLARED** the duly elected Mayor of Kauswagan, Lanao del Norte in the 10 May 2010 elections.

This Decision is immediately executory.

Let a copy of this Decision be served personally upon the parties and the Commission on Elections.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr., Peralta, Bersamin, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Carpio, J., see concurring opinion.

Abad, J., see separate and concurring opinion.

Leonardo-de Castro, del Castillo, Mendoza, and *Leonen, JJ.,* join the dissent of Justice Brion.

Brion, J., see dissent.

CONCURRING OPINION

CARPIO, *J.*:

I concur in the *ponencia*. Respondent Rommel Arnado (Arnado) is disqualified from running for any local elective

position. The Commission on Elections (COMELEC) should be directed to proclaim Petitioner Casan Macode Maquiling (Maquiling) as the duly elected Mayor of Kauswagan, Lanao del Norte in the May 2010 elections.

Arnado received the highest number of votes in the May 2010 elections and was proclaimed Mayor of Kauswagan, Lanao del Norte. Respondent Linog G. Balua (Balua), one of Arnado's opponents, filed a petition before the COMELEC against Arnado. Balua's petition to disqualify Arnado and/or to cancel his certificate of candidacy rests on the allegation that Arnado lacks the residency and citizenship requirements. Balua presented evidence to show that Arnado used his American passport to enter and depart the Philippines. Maquiling, on the other hand, was also one of Arnado's opponents. Maquiling received the second highest number of votes next to Arnado. Maquiling filed motions for intervention and for reconsideration before the COMELEC *En Banc*. Maquiling asserted that he should have been proclaimed as Mayor for being the legitimate candidate with the highest number of votes.

Arnado is a natural-born Filipino citizen who lost his Filipino citizenship upon his naturalization as an American citizen. Arnado applied for repatriation, and subsequently took two Oaths of Allegiance to the Republic of the Philippines, then renounced his American citizenship. The relevant timeline is as follows:

10 July 2008 - Arnado pledged his Oath of Allegiance to the Republic of the Philippines.

3 April 2009 - Arnado again pledged his Oath of Allegiance to the Republic of the Philippines and executed an Affidavit of Renunciation of his American citizenship.

14 April to 25 June 2009 - Arnado used his United States of America (USA) Passport No. 057782700 to depart and enter the Philippines.

29 July to 24 November 2009 - Arnado again used his USA Passport No. 057782700 to depart and enter the Philippines.

30 November 2009 - Arnado filed his Certificate of Candidacy for Mayor of Kauswagan, Lanao del Norte.

A certification from the Bureau of Immigration showed that Arnado arrived in the Philippines on 12 January 2010, as well as on 23 March 2010. Both arrival dates show that Arnado used the same USA passport he used in 2009.

Despite Balua's petition before the COMELEC, the elections proceeded without any ruling on Arnado's qualification. Arnado received the highest number of votes in the May 2010 elections and was proclaimed Mayor of Kauswagan, Lanao del Norte.

The COMELEC First Division issued its ruling on Arnado's qualification after his proclamation. The COMELEC First Division treated Balua's petition to disqualify Arnado and/or to cancel his certificate of candidacy as a petition for disqualification. The COMELEC First Division granted Balua's petition and annulled Arnado's proclamation. The COMELEC First Division stated that "Arnado's continued use of his US passport is a strong indication that Arnado had no real intention to renounce his US citizenship and that he only executed an Affidavit of Renunciation to enable him to run for office." The COMELEC First Division decreed that the order of succession under Section 44 of the Local Government Code of 1991[1] should take effect.

Arnado filed a motion for reconsideration before the COMELEC *En Banc*. Maquiling intervened, and asserted that although the COMELEC First Division correctly disqualified Arnado, the law on succession should not apply. Instead, Maquiling should have been proclaimed as Mayor for being the legitimate candidate with the highest number of votes.

The COMELEC *En Banc* reversed and set aside the ruling of the COMELEC First Division. In granting Arnado's motion for reconsideration, the COMELEC *En Banc* stated that Arnado's use of his USA passport "does not operate to revert back [sic]

[1] Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor*. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. x x x.

his status as a dual citizen prior to his renunciation as there is no law saying such." COMELEC Chair Sixto Brillantes concurred, and stated that Arnado "after reacquiring his Philippine citizenship should be presumed to have remained a Filipino despite his use of his American passport in the absence of clear, unequivocal and competent proof of expatriation." Commissioner Rene Sarmiento dissented, and declared that Arnado failed to prove that he abandoned his allegiance to the USA and that his loss of the continuing requirement of citizenship disqualifies him to serve as an elected official. Moreover, having received the highest number of votes does not validate Arnado's election.

The *ponencia* granted Maquiling's petition before this Court, and annulled and set aside the ruling of the COMELEC *En Banc*. The *ponencia* declared that Arnado's use of his USA passport did not divest him of his Filipino citizenship but vested back in him the American citizenship he earlier renounced. The *ponencia* also directed the COMELEC to proclaim Maquiling as the duly elected Mayor of Kauswagan, Lanao del Norte in the May 2010 elections for being the qualified candidate who received the highest number of votes.

On Arnado's Use of a Non-Philippine Passport

Philippine courts have no power to declare whether a person possesses citizenship other than that of the Philippines. In *Mercado v. Manzano*,[2] Constitutional Commissioner Joaquin G. Bernas was quoted as saying, "[D]ual citizenship is just a reality imposed on us because we have no control of the laws on citizenship of other countries. We recognize a child of a Filipino mother. But whether or not she is considered a citizen of another country is something completely beyond our control."[3] In the present case, we have no authority to declare that Arnado is an American citizen. Only the courts of the USA, using American law, have the conclusive authority to make an assertion regarding Arnado's American citizenship.

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[2] 367 Phil. 132 (1999) citing 1 RECORD OF THE CONSTITUTIONAL COMMISSION 203 (23 June 1986).

[3] *Id.* at 147.

Arnado, as a naturalized American citizen and a repatriated Filipino, is required by law to swear to an Oath of Allegiance to the Republic of the Philippines and execute a Renunciation of Foreign Citizenship before he may seek elective Philippine public office. The pertinent Sections of R.A. No. 9225 read:

Section 3. *Retention of Philippine Citizenship*. — Any provision of law to the contrary notwithstanding, natural-born citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

> "I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I imposed this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

Section 5. *Civil and Political Rights and Liabilities*. — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

xxx x x x xxx

(2) Those seeking elective public office in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

xxx x x x xxx.

Arnado's use of his American passport after his execution of an Affidavit of Renunciation of his American Citizenship is a **retraction** of his renunciation. When Arnado filed his

Certificate of Candidacy on 30 November 2009, there was no longer an effective renunciation of his American citizenship. It is as if he never renounced his American citizenship at all. Arnado, therefore, failed to comply with the twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship as found in Republic Act No. 9225. We previously discussed the distinction between dual citizenship and dual allegiance, as well as the different acts required of dual citizens, who may either have involuntary dual citizenship or voluntary dual allegiance, who desire to be elected to Philippine public office in *Cordora v. COMELEC*:[4]

> We have to consider the present case in consonance with our rulings in *Mercado v. Manzano*, *Valles v. COMELEC*, and *AASJS v. Datumanong*. *Mercado* and *Valles* involve similar operative facts as the present case. Manzano and Valles, like Tambunting, possessed dual citizenship by the circumstances of their birth. Manzano was born to Filipino parents in the United States which follows the doctrine of *jus soli*. Valles was born to an Australian mother and a Filipino father in Australia. Our rulings in *Manzano* and *Valles* stated that dual citizenship is different from dual allegiance both by cause and, for those desiring to run for public office, by effect. Dual citizenship is involuntary and arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. Thus, like any other natural-born Filipino, it is enough for a person with dual citizenship who seeks public office to file his certificate of candidacy and swear to the oath of allegiance contained therein. Dual allegiance, on the other hand, is brought about by the individual's active participation in the naturalization process. *AASJS* states that, under R.A. No. 9225, a Filipino who becomes a naturalized citizen of another country is allowed to retain his Filipino citizenship by swearing to the supreme authority of the Republic of the Philippines. The act of taking an oath of allegiance is an implicit renunciation of a naturalized citizen's foreign citizenship.
>
> R.A. No. 9225, or the Citizenship Retention and Reacquisition Act of 2003, was enacted years after the promulgation of *Manzano* and *Valles*. The oath found in Section 3 of R.A. No. 9225 reads as follows:

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[4] G.R. No. 176947, 19 February 2009, 580 SCRA 12. Citations omitted.

> I _____ , solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.

In Sections 2 and 3 of R.A. No. 9225, the framers were not concerned with dual citizenship per se, but with the status of naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Section 5(2) of R.A. No. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for elective public office in the Philippines shall "meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of filing the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. No. 9225. The twin requirements of swearing to an Oath of Allegiance and executing a Renunciation of Foreign Citizenship served as the bases for our recent rulings in *Jacot v. Dal and COMELEC*, *Velasco v. COMELEC*, and *Japzon v. COMELEC*, all of which involve natural-born Filipinos who later became naturalized citizens of another country and thereafter ran for elective office in the Philippines. In the present case, Tambunting, a natural-born Filipino, did not subsequently become a naturalized citizen of another country. Hence, the twin requirements in R.A. No. 9225 do not apply to him.[5]

Hence, Arnado's failure to comply with the twin requirements of R.A. No. 9225 is clearly a failure to qualify as a candidate for Philippine elective public office. He is still deemed, under Philippine law, holding allegiance to a foreign country, which disqualifies him from running for an elective public office. Such failure to comply with the twin requirements of R.A. No. 9225 is included among the grounds for disqualification in Section 68 of the Omnibus Election Code: "*Disqualifications.* – x x x. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective

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[5] *Id.* at 23-25.

office under this Code, unless said person has waived his status as a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in election laws."

On the Selection of the Lawful Mayor of Kauswagan, Lanao del Sur

Arnado used his USA passport **after** his Renunciation of American Citizenship and **before** he filed his Certificate of Candidacy. This positive act of retraction of his renunciation before the filing of the Certificate of Candidacy renders Arnado's Certificate of Candidacy **void** *ab initio*. Therefore, Arnado was **never** a candidate at any time, and all the votes for him are **stray votes**. We reiterate our ruling in *Jalosjos v. COMELEC*[6] on this matter:

> Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio*

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[6] G.R. Nos. 193237 and 193536, 9 October 2012. Citations omitted. See also *Cayat v. COMELEC*, G.R. Nos. 163776 and 165736, 24 April 2007, 522 SCRA 23; and *Aratea v. COMELEC*, G.R. No. 195229, 9 October 2012.

can operate to defeat one or more valid certificates of candidacy for the same position.[7]

It is undisputed that Arnado had to comply with the twin requirements of allegiance and renunciation. However, Arnado's use of his USA passport after the execution of his Affidavit of Renunciation constituted a retraction of his renunciation, and led to his failure to comply with the requirement of renunciation at the time he filed his certificate of candidacy. His certificate of candidacy was thus void *ab initio*. Garnering the highest number of votes for an elective position does not cure this defect. Maquiling, the alleged "second placer," should be proclaimed Mayor because Arnado's certificate of candidacy was void *ab initio*. Maquiling is the qualified candidate who actually garnered the highest number of votes for the position of Mayor.

SEPARATE AND CONCURRING OPINION

ABAD, *J.*:

I fully concur with the majority but would add another argument in support of the decision.

Sec. 5(2) of Republic Act 9225 provides the means by which a former Philippine citizen who has acquired foreign citizenship to later reacquire his old citizenship by complying with certain requirements. Respondent Rommel Arnado complied with these requirements for regaining Philippine citizenship but, because he wanted to run for public office, he also renounced his United States (U.S.) Citizenship when he filed his certificate of candidacy, conformably with the provisions of Republic Act 9225 that reads:

> (2) Those seeking elective public in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

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[7] *Id.*

But his compliance with the above was challenged before the Commission on Elections (Comelec) because Arnado afterwards twice used his U.S. passport in going to and coming from the U.S., the country whose citizenship he had renounced.

The majority opinion amply states that by his acts, Arnado showed that he did not effectively renounce his U.S. citizenship. To this I add that he also failed to comply with the U.S. requirements for citizens wishing to renounce their citizenships.

Section 349 (a)(5) of the Immigration and Nationality Act (INA)[1] sets the procedure that those who have moved their residence to other countries must observe when renouncing their U.S. citizenship. It provides that "(a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality – x x x (5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State." He does not effectively renounce his citizenship who does not comply with what his country requires of him.

Here, there is no showing that Arnado, a U.S. citizen, fulfilled the above requirement. To the eyes of the U.S. government, Arnado remains its citizen, owing obligations of loyalty to it and subject to its laws wherever he may be. Indeed, the U.S. government had not cancelled his passport, permitting him to use the same a number of times after he reacquired his Philippine citizenship. If the U.S. continues to regard Arnado as its citizen, then he has two citizenships, a ground for cancelling his certificate of candidacy for a public office in the Philippines.

DISSENTING OPINION

BRION, *J.*:

I **dissent** from the *ponencia's* conclusions that:

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[1] 8 U.S.C. 1481(a)(5).

(1) respondent Rommel C. Arnado's (*Arnado*) use of his US passport in traveling twice to the US violated his Oath of Renunciation so that he reverted back to the status of a dual citizen – a distinct ground for disqualification under Section 40(d) of the Local Government Code (*LGC*) that barred him from assuming the office of Mayor of Kauswagan, Lanao del Norte; and

(2) the petitioner, Casan Macode Maquiling (*Maquiling*), the "second placer" in the 2010 elections, should be rightfully seated as Mayor of Kauswagan, Lanao del Norte.

I base this **Dissent** on the following **grounds**:

1) Arnado has performed all acts required by Section 5(2) of Republic Act No. 9225[1] (*RA 9225*) to re-acquire Philippine citizenship and to qualify and run for public office;

2) The evidence on record shows that Arnado's use of his US passport in two trips to the US after re-acquiring his Philippine citizenship under RA 9225 and renouncing his US citizenship, were mere isolated acts that were sufficiently justified under the given circumstances that Arnado fully explained;

3) Arnado's use of his US passport did not amount to an express renunciation of his Philippine citizenship under Section 1 of Commonwealth Act No. 63 (*CA 63*);

4) Under the circumstances of this case, Arnado did not do anything to negate the oath of renunciation he took;

5) At any rate, all doubts should be resolved in favor of Arnado's eligibility after this was confirmed by the mandate of the people of Kauswagan, Lanao del Norte by his election as Mayor; and

6) The assailed findings of facts and consequent conclusions of law are based on evidence on record and are correct applications of law; hence, no basis exists for this Court to rule that the Comelec *en banc* committed grave abuse of discretion in ruling on the case.

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[1] *An Act Making The Citizenship Of Philippine Citizens Who Acquire Foreign Citizenship Permanent, Amending For the Purpose Commonwealth Act No. 63, As Amended And For Other Purposes.*

The Antecedent Facts

Respondent Rommel Cagoco Arnado is a natural born Filipino citizen, born to Filipino parents on July 22, 1957 at Iligan City, Lanao del Norte.[2] In 1985, he immigrated to the United States for job purposes.[3] He was deemed to have lost his Filipino citizenship by operation of law[4] when he became a naturalized citizen of the United States of America while in America.

In 2003, Congress declared it the policy of the State that all Philippine citizens who become citizens of another country shall be deemed not to have lost their Philippine citizenship upon compliance with the statute Congress passed – RA 9225.[5]

Arnado, like many other Filipinos before him, at age 51 and after a stay of 23 years in the U.S., opted to re-affirm his Filipino citizenship by filing the required application and taking his oath before the Philippine Consulate General in San Francisco, USA. His application was approved by Consul Wilfredo C. Santos, evidenced by an Order of Approval dated July 10, 2008.[6] He took his Oath of Allegiance to the Republic of the Philippines (*Republic*) on the same day and was accordingly issued Identification Certificate Number SF-1524-08/2008 declaring him once more purely a citizen of the Republic.[7]

On **April 3, 2009**, Arnado took another Oath of Allegiance to the Republic and executed an Affidavit of Renunciation of his foreign citizenship.[8]

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[2] *Rollo*, p. 229.

[3] *Id.* at 162.

[4] Section 1 of Commonwealth Act No. 63 states:

Section 1. How citizenship may be lost. – A Filipino citizen may lose his citizenship in any of the following ways and/or events:

(1) By **naturalization in a foreign country**;

[5] Otherwise known as the Citizenship Retention and Re-acquisition Act of 2003.

[6] *Rollo*, p. 239.

[7] *Id.* at 240.

[8] *Id.* at 160.

Eleven days later or on **April 14, 2009**, Arnado left the country for the United States. According to Bureau of Immigration records, Arnado then used a passport – US Passport (No. 057782700) – that identified his nationality as "USA-AMERICAN." The same record also indicated that Arnado used the same U.S. Passport when he returned to the country on **June 25, 2009.** This happened again when he left for the United States on **July 29, 2009** and returned to the country on **November 24, 2009.**[9]

The record does not show the exact date when Arnado applied for a Philippine passport; it shows however that Consulate General of the Philippines in San Francisco, USA, approved and **issued a Philippine Passport** (No. XX 3979162) for Arnado **on June 18, 2009**.[10] He received this passport three (3) months later.[11] Thereafter, he used his Philippine passport in his travels on the following dates: December 11, 2009 (Departure), January 12, 2010 (Arrival), January 31, 2010 (Departure), March 31, 2010 (Arrival), April 11, 2010 (Departure) April 16, 2010 (Arrival), May 20, 2010 (Departure) and June 4, 2010 (Arrival).[12]

On November 30, 2009 or six months after he fully complied with the requirements of R.A. No. 9225, **Arnado filed his Certificate of Candidacy** *(CoC)* for the position of Mayor of Kauswagan, Lanao del Norte.[13]

Five months after or on April 28, 2010, respondent mayoralty candidate Linog C. Balua (*Balua*) filed a petition to disqualify Arnado and/or to cancel his CoC. Balua contended that Arnado is a foreigner and is not a resident of Kauswagan, Lanao del Norte. Balua attached to his petition a Bureau of Immigration (*BI*) certification dated April 23, 2010 indicating Arnado's nationality as "USA-American" and certifying that the name

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[9] *Id.* at 191.

[10] *Id.* at 218.

[11] *Id.* at 219.

[12] *Id.* at 242-245.

[13] *Id.* at 139.

Arnado Rommel Cagoco appears in the Computer Database/ Passenger Manifest with the following pertinent travel records:[14]

DATE OF Arrival	:	01/12/2010
NATIONALITY	:	USA-AMERICAN
PASSPORT	:	057782700
DATE OF Arrival	:	03/23/2010
NATIONALITY	:	USA-AMERICAN
PASSPORT	:	057782700

(Significantly, Arnado also submitted the photocopy of his Philippine passport showing that he used his Philippine passport on travels on these dates.)[15]

Balua also presented a computer generated travel record dated December 3, 2009 indicating that Arnado has been using his US Passport No. 057782700 in entering and departing the Philippines. The record showed that Arnado left the country on April 14, 2009 and returned on June 25, 2009; he departed again on July 29, 2009 and arrived back in the country on November 24, 2009.[16] ***In these lights, Arnado's disqualification was a live election issue, well-known to the Kauswagan electorate, who nevertheless voted Arnado into office as Mayor***.[17]

The Comelec First Division ordered Arnado to file his Answer (to Balua's petition) and a Memorandum. With the petition filed a mere two weeks from election day, Arnado failed to comply, thus giving Balua the opportunity to move that Arnado be declared in default. The Comelec, however, failed to act on the motion as the case was overtaken by the May 10, 2010 elections.

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[14] *Id.* at 192.

[15] Annexes A-1-A-4 of Respondent's Motion for Reconsideration, *Id.* at 204-208.

[16] *Id.* at 191.

[17] Balua filed the petition to disqualify and/or to cancel Arnado's CoC on April 28, 2010, prior to the May 10, 2010 elections. *Id.* at 134-136.

Arnado won the election, garnering 5,952 votes over the second placer, Maquiling, who garnered 5,357 votes. The Municipal Board of Canvassers subsequently proclaimed him as the duly elected mayor of Kauswagan, Lanao del Norte.[18]

In the Answer which he filed after his proclamation, Arnado averred that he did not commit any material misrepresentation in his CoC, and that he was eligible to run for the office of mayor of Kauswagan, Lanao del Norte; he had fully complied with the requirements of RA 9225 by taking the required Oath of Allegiance and executing an Affidavit of Renunciation of his U.S. citizenship.[19] To support his allegations, Arnado also submitted the following documentary evidence:

(1)Affidavit of Renunciation and Oath of Allegiance to the Republic of the Philippines dated April 3, 2009;

(2) Joint-Affidavit dated May 31, 2010 of Engr. Virgil Seno, Virginia Branzuela, Leoncio Daligdig, and Jessy Corpin, all neighbors of Arnado, attesting that Arnado is a long-time resident of Kauswagan and that he has been conspicuously and continuously residing in his family's ancestral house in Kauswagan;

(3) Certification from the *Punong Barangay* of Poblacion, Kauswagan, Lanao del Norte dated June 3, 2010 stating that Arnado is a *bona fide* resident of his *barangay* and that Arnado went to the United States in 1985 to work and returned to the Philippines in 2009;

(4) Certification dated May 31, 2010 from the Municipal Local Government Operations Office of Kauswagan stating that Dr. Maximo P. Arnado, Sr. served as Mayor of Kauswagan from January 1964 to June 1974 and from February 15, 1979 to April 15, 1986;

(5) Voter Certification issued by the Election Officer of Kauswagan certifying that Arnado has been a registered voter of Kauswagan since April 3, 2009.[20]

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[18] *Id.* at 161.

[19] *Id.* at 148-156.

[20] *Id.* at 160-164.

The Comelec First Division Ruling

The Comelec First Division treated Balua's petition as a petition for disqualification instead of a petition for cancellation of CoC based on misrepresentation. Because Balua failed to present evidence to support his contention that Arnado is a resident of the United States, the First Division found no basis to conclude that Arnaldo did not meet the one-year residency requirement under the LGC.

On the issue of citizenship, the First Division held Arnado's act of using his US passport after renouncing his US citizenship on April 3, 2009, effectively negated his Oath of Renunciation. As basis, the First Division cited the Court's ruling in *In Re Petition for Habeas Corpus of Willie Yu v. Defensor-Santiago, et al.* It concluded that Arnado's continued use of his US passport was a strong indication that he had no real intention to renounce his US citizenship and that he only executed an Oath of Renunciation to enable him to run for office. The Division noted in this regard the glaring inconsistency between Arnado's unexplained use of his US passport and his claim that he had re-acquired Philippine citizenship and had renounced his US citizenship.

Based on these premises, the Comelec First Division disqualified Arnado, annulled his proclamation, and ordered that the order of succession to the mayoralty under Section 44 of the LGC be given effect.[21]

Maquiling's Intervention

While Arnado's motion for reconsideration was pending, Maquiling intervened and filed a Motion for Reconsideration and an opposition to Arnado's motion for reconsideration.

Maquiling argued that while the First Division correctly disqualified Arnado, the order of succession under Section 44 is not applicable; he claimed that with the cancellation of Arnado's

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[21] *Id.* at 38-49.

CoC and the nullification of his proclamation, he should be proclaimed the winner since he was the legitimate candidate who obtained the highest number of votes.[22]

The Comelec en banc Ruling

The Comelec *en banc* affirmed the First Division's treatment of the petition as a **petition for disqualification**. It also agreed with the disposition of the First Division to follow the order of succession under Section 44, thus ruling out second placer Maquiling's entitlement to the post of Mayor.

The Comelec *en banc* however, **reversed the First Division ruling** and granted Arnado's Motion for Reconsideration. It held that by renouncing his US citizenship, Arnado became a "pure" Philippine citizen again. It ruled that the use of a US passport does not operate to revert Arnado's status as a dual citizen prior to his renunciation; it does not operate to "un-renounce" what had earlier been renounced.

The Comelec *en banc* further ruled that the First Division's reliance on *In Re Petition for Habeas Corpus of Willie Yu v. Defensor-Santiago, et al.*,[23] was misplaced as the facts of this cited case are not the same or comparable with those of the present case. Unlike the present case, the petitioner in *Yu* was a naturalized citizen who, after taking his oath as a naturalized Filipino citizen, applied for a renewal of his Portuguese passport.

Finally, the Comelec *en banc* found that Arnado presented a plausible and believable explanation justifying the use of his US passport. While his Philippine passport was issued on June 18, 2009, he was not immediately notified of the issuance so that he failed to actually get it until after three months later. He thereafter used his Philippine passport in his subsequent travels abroad.[24]

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[22] *Id.* at 89-96.

[23] G.R. No. L-83882, January 24, 1989, 169 SCRA 364.

[24] *Rollo*, pp. 50-67.

The Separate and Dissenting Opinions

Significantly, ***Comelec Chairman Sixto S. Brillantes issued a Separate Opinion concurring with the Comelec majority***. He opined that the use of a foreign passport is not one of the grounds provided for under Section 1 of CA 63 through which Philippine citizenship may be lost. He cites the assimilative principle of continuity of Philippine citizenship: Arnado is presumed to have remained a Filipino despite his use of his American passport in the ***absence of clear and unequivocal proof of expatriation***. In addition, all doubts should be resolved in favor of Arnado's retention of citizenship.[25]

In his ***Dissenting Opinion***, Commissioner Rene V. Sarmiento emphasized that Arnado failed to prove that he truly abandoned his allegiance to the United States; his continued use of his US passport and enjoyment of all the privileges of a US citizen ran counter to his declaration that he chose to retain only his Philippine citizenship. He noted that qualifications for elective office, such as citizenship, are continuing requirements; once citizenship is lost, title to the office is deemed forfeited.[26]

The Issues

The complete issues posed for the Court's consideration are:

(1) Whether intervention is allowed in a disqualification case;

(2) Whether the use of a foreign passport after renouncing foreign citizenship amounts to undoing a renunciation made, and whether the use of a foreign passport after renouncing foreign citizenship affects one's qualifications to run for public office;

(3) Assuming Arnado is disqualified, whether the rule on succession in the LGC is applicable in the present case;[27]

(4) How should doubt in the present case be resolved in light of Arnado's election; and

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[25] *Id.* at 68-69.

[26] *Id.* at 70-73.

[27] *Ponencia,* p. 10.

(5) Whether, based on the facts presented and the applicable law, the Comelec *en banc* committed grave abuse of discretion.

The Ponencia

The *ponencia* grants Maquiling's petition for *certiorari*, thus holding that the Comelec *en banc* committed grave abuse of discretion in considering the facts and the law presented. It thus holds that Arnado is a dual citizen disqualified to run for public office under Section 40(d) of the LGC. On this basis, the *ponencia* rules that with Arnado's disqualification, second placer Maquiling should be proclaimed as the duly elected Mayor of Kauswagan, Lanao del Norte.

Based on this conclusion, the *ponencia* resolves all doubts against Arnado and disregards the democratic decision of the Kauswagan electorate.

As the *ponencia* reasons it out, the act of using a foreign passport does not divest Arnado of his Filipino citizenship. By representing himself as an American citizen, however, Arnado voluntarily and effectively reverted to his earlier status as dual citizen. It emphasizes that such reversion is not retroactive; it took place the instant Arnado represented himself as an American citizen by using his US passport.

Thus, by the time Arnado filed his CoC on November 30, 2009, the *ponencia* concludes that Arnado was a dual citizen enjoying the rights and privileges of Filipino and American citizenship; he was qualified to vote, but by the express disqualification under Section 40 (d) of the LGC, he was not qualified as a candidate to run for a local elective position.[28]

With Arnado barred from candidacy, the *ponencia* further concludes that his CoC was void from the beginning. The affirmation of Arnado's disqualification, although made long after the elections, reaches back to the filing of the CoC so

[28] *Ponencia*, p. 17.

that he was not a candidate at all in the May 10, 2010 elections. Hence, the votes cast in his favor should not be counted and Maquiling, as the qualified candidate who obtained the highest number of vote, should be declared the duly elected mayor of Kauswagan, Lanao del Norte.[29] In this manner, the *ponencia* effectively disenfranchised 5,952 or ***52.63% of those who voted for the top two contending candidates*** for the position of Mayor; it rules for a minority Mayor.

Refutation of the Ponencia

Arnado performed all acts required by Section 5(2) of RA 9225 to reacquire Philippine citizenship and run for public office; in fact, he actively followed up his re-affirmed citizenship by running for public office.

RA 9225 was enacted to allow the re-acquisition and retention of Philippine citizenship by: 1) natural-born citizens who were deemed to have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country; and 2) natural-born citizens of the Philippines who, after the effectivity of the law, became citizens of a foreign country. The law provides that they are deemed to have re-acquired or retained their Philippine citizenship upon taking the oath of allegiance.[30]

Section 3 of RA 9225 on these points reads:

Section 3. ***Retention of Philippine Citizenship*** - Any provision of law to the contrary notwithstanding, natural-born citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

> "I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated

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[29] *Id.* at 26.

[30] *De Guzman v. Commission on Elections*, G.R. No. 180048, June 19, 2009, 590 SCRA 141, 156.

> by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I imposed this obligation upon myself voluntarily without mental reservation or purpose of evasion."

Natural born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

Arnado falls under the first category as a natural-born Filipino citizen who was deemed to have lost his Philippine citizenship upon his naturalization as an American citizen.

Under the given facts, Arnado indisputably re-acquired Philippine citizenship after taking the Oath of Allegiance not only once but twice – on July 10, 2008 and April 3, 2009. Separately from this oath of allegiance, Arnado took an oath renouncing his American citizenship as additionally required by RA 9225 for those seeking public office.

Section 5 of RA 9225 on this point provides:

Section 5. ***Civil and Political Rights and Liabilities*** - Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

> (2) Those seeking elective public office in the Philippines shall meet the qualification for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath.

In *Japzon v. Commission on Elections,*[31] we ruled that Section 5(2) of RA 9225 requires the twin requirements of taking an Oath of Allegiance and the execution of a similarly sworn Renunciation of Foreign Citizenship. We said:

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[31] G.R. No. 180088, January 19, 2009, 576 SCRA 331.

Breaking down the afore-quoted provision, for a natural born Filipino, who reacquired or retained his Philippine citizenship under Republic Act No. 9225, to run for public office, he must: (1) meet the qualifications for holding such public office as required by the Constitution and existing laws; and (2) make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath.[32]

Thus, the respondent in that case, Jaime Ty - a natural born Filipino citizen who subsequently became a naturalized American citizen - became a "pure" Philippine citizen again after taking the Oath of Allegiance and executing an Oath of Renunciation of his American citizenship. To quote our Decision:

He was born and raised in the Municipality of General Macarthur, Eastern Samar, Philippines. However, he left to work in the USA and eventually became an American citizen. On 2 October 2005, Ty reacquired his Philippine citizenship by taking his Oath of Allegiance to the Republic of the Philippines before Noemi T. Diaz, Vice Consul of the Philippine Consulate General in Los Angeles, California, USA, in accordance with the provisions of Republic Act No. 9225. At this point, Ty still held dual citizenship, *i.e.*, American and Philippine. It was only on 19 March 2007 that Ty renounced his American citizenship before a notary public and, resultantly, became a pure Philippine citizen.[33]

In the present case, Arnado indisputably complied with the second requirement of Section 5(2) of RA 9225. On April 3, 2009, he personally executed an Affidavit of Renunciation an Oath of Allegiance before notary public Thomas Dean M. Quijano. Therefore, when he filed his CoC for the position of Mayor of the Municipality of Kauswagan, Lanao del Norte on November 30, 2009, he had already effectively renounced his American citizenship, solely retaining his Philippine citizenship as the law requires. In this way, Arnado qualified for the position of Mayor of Kauswagan, Lanao del Norte and filed a valid CoC.

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[32] *Id.* at 346.

[33] *Id.* at 344.

The evidence on record shows that Arnado's use of his US passport after his compliance with the terms of RA 9225, was an isolated act that was sufficiently explained and justified.

The records bear out that Arnado used his US passport in two trips to and from the US *after* he had executed his Affidavit of Renunciation on April 3, 2009. He travelled on the following dates:

Date	**Destination**
April 14, 2009	to the U.S.
June 25, 2009	to the Philippines
July 29, 2009	to the U.S.
November 24, 2009	**to the Philippines**

Arnado's Philippine passport was issued on June 18, 2009, but he was not immediately notified of the issuance so that and he only received his passport three months after or sometime in ***September 2009***.[34] ***Clearly, when Arnado travelled on April 14, 2009, June 25, 2009 and July 29, 2009, he had no Philippine passport that he could have used to travel to the United States to attend to the winding up of his business and other affairs in America.*** A travel document issued by the proper Philippine government agency (*e.g.*, a Philippine consulate office in the US) would not suffice because travel documents could not be used; they are issued only in critical instances, as determined by the consular officer, and allow the bearer only a direct, one-way trip to the Philippines.[35]

Although Arnado received his Philippine passport by the time he returned to the Philippines on November 24, 2009, he could not use this without risk of complications with the US immigration authorities for using a travel document different from what he

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[34] *Rollo*, p. 219.

[35] See http://www.philippineconsulatela.org/FAQs/FAQS-passport.htm#TD1 (last visited April 14, 2013).

used in his entry into the US on July 29, 2009. Plain practicality then demanded that the travel document that he used to enter the US on July 29, 2009 be the same travel document he should use in leaving the country on November 24, 2009.

Given these circumstances, Arnado's use of his US passport in travelling back to the Philippines on November 24, 2009 was an isolated act that could not, by itself, be an express renunciation of the Philippine citizenship he adopted as his sole citizenship under RA 9225.

Arnado's use of his US passport was not an express renunciation of his Philippine citizenship under Section 1 of CA 63.

I disagree with the *ponencia's* view that by using his US passport and representing himself as an American citizen, Arnado effectively reverted to the status of a dual citizen. ***Interestingly, the ponencia failed to cite any law or controlling jurisprudence to support its conclusion, and thus merely makes a bare assertion.***

The *ponencia* fails to consider that under RA 9225, natural-born citizens who were deemed to have lost their Philippine citizenship because of their naturalization as citizens of a foreign country and who subsequently complied with the requirements of RA 9225, are ***deemed not to have lost*** their Philippine citizenship. ***RA 9225 cured and negated the presumption made under CA 63***. Hence, as in *Japzon*, Arnado assumed "pure" Philippine citizenship again after taking the Oath of Allegiance and executing an Oath of Renunciation of his American citizenship under RA 9225.

In this light, the proper framing of the main issue in this case should be whether Arnado's use of his US passport affected his status as a "pure" Philippine citizen. In question form – ***did Arnado's use of a US passport amount to a ground under the law for the loss of his Filipino citizenship under CA 63?*** Or alternatively, the retention of his dual citizenship status?

I loathe to rule that Arnado's use of his US passport amounts to an express renunciation of his Filipino citizenship, when its use was an isolated act that he sufficiently explained and fully justified. I emphasize that the law requires ***express renunciation*** in order to lose Philippine citizenship. The term means a renunciation that is made ***distinctly and explicitly and is not left to inference or implication***; ***it is a renunciation manifested by direct and appropriate language, as distinguished from that which is inferred from conduct***.[36]

A clear and vivid example, taken from jurisprudence, of ***what "express renunciation" is not*** transpired in *Aznar v. Comelec*[37] where the Court ruled that the mere fact that respondent Osmena was a holder of a certificate stating that he is an American did not mean that he is no longer a Filipino, and that an application for an alien certificate of registration did not amount to a renunciation of his Philippine citizenship.

In the present case, other than the use of his US passport in two trips to and from the United States, the record does not bear out any indication, supported by evidence, of Arnado's intention to re-acquire US citizenship. To my mind, in the absence of clear and affirmative acts of re-acquiring US citizenship either by naturalization or by express acts (such as the re-establishment of permanent residency in the United States), Arnado's use of his US passport cannot but be considered an isolated act that did not undo his renunciation of his US citizenship. What he might in fact have done was to violate American law on the use of passports, but this is a matter irrelevant to the present case. Thus, Arnado remains to be a "pure" Filipino citizen and the loss of his Philippine citizenship cannot be presumed or inferred from his isolated act of using his US passport for travel purposes.

Arnado did not violate his oath of renunciation; at any rate, all doubts should be resolved in favor of

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[36] *Board of Immigration Commissioners v. Go Callano,* G.R. No. L-24530, October 31, 1968, 25 SCRA 890, 899.

[37] G.R. No. 83820, May 25, 1990, 185 SCRA 703.

Arnado's eligibility considering that he received the popular mandate of the people of Kauswagan, Lanao del Norte as their duly elected mayor

I completely agree with the *ponencia* that the Oath of Renunciation is not an empty or formal ceremony that can be perfunctorily professed at any given day, only to be disregarded on the next. As a mandatory requirement under Section 5 (2) of RA 9225, it allows former natural-born Filipino citizens who were deemed to have lost their Philippine citizenship by reason of naturalization as citizens of a foreign country to enjoy full civil and political rights, foremost among them, the privilege to run for public office.

I disagree however, with the conclusion that Arnado effectively negated his Oath of Renunciation when he used his US passport for travel to the United States. To reiterate if only for emphasis, Arnado sufficiently justified the use of his US passport despite his renunciation of his US citizenship; when he travelled on April 14, 2009, June 25, 2009 and July 29, 2009, he had no Philippine passport that he could have used to travel to the United States to attend to the business and other affairs that he was leaving. If at all, he could be faulted for using his US passport by the time he returned to the Philippines on November 24, 2009 because at that time, he had presumably received his Philippine passport. However, given the circumstances explained above and that he consistently used his Philippine passport for travel after November 24, 2009, the true character of his use of his US passport stands out and cannot but be an isolated and convenient act that did not negate his Oath of Renunciation.

The People of Kauswagan have spoken and any doubt should be resolved in favor of their verdict.

Separately from the issue of Arnado's isolated act of using his US passport, we cannot ignore the fact in a community as small as Kauswagan where the two mayoralty candidates garnered a total of 11,309 votes, Balua's claim of Arnado's foreign citizenship and even the latter's residency status

could not be avoided but be live election issues. ***The people of Kauswagan, Lanao del Norte, therefore, made their own ruling when they elected Arnado as their mayor despite the "foreigner" label sought to be pinned on him.*** At this point, even this Court should heed this verdict by resolving all doubts regarding Arnado's eligibility in his favor. This approach, incidentally, is not a novel one[38] as in *Sinaca v. Mula*,[39] the Court has already ruled:

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[38] See *J.* Panganiban's Concurring Opinion in *Bengson III v. House Representatives Electoral Tribunal* (G.R. No. 142840, May 7, 2001, 357 SCRA 545) where respondent Teodoro C. Cruz' citizenship was also questioned, *viz*:

4. In Case of Doubt, Popular Will Prevails

Fourth, the court has a solemn duty to uphold the clear and unmistakable mandate of the people. It cannot supplant the sovereign will of the Second District of Pangasinan with fractured legalism. The people of the District have clearly spoken. They overwhelmingly and unequivocally voted for private respondent to represent them in the House of Representatives. The votes that Cruz garnered (80, 119) in the last elections were much more than those of all his opponents combined (66, 182).23 In such instances, all possible doubts should be resolved in favor of the winning candidate's eligibility; to rule otherwise would be to defeat the will of the people.

Well-entrenched in our jurisprudence is the doctrine that in case of doubt, political laws must be so constructed as to give life and spirit to the popular mandate freely expressed through the ballot. Public interest and the sovereign will should, at all times, be the paramount considerations in election controversies. For it would be better to err in favor of the people's choice than to be right in complex but little understood legalisms.

Indeed, this Court has repeatedly stressed the importance of giving effect to the sovereign will in order to ensure the survival of our democracy. In any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrative that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote

See also *Fernandez v. House of Representatives Electoral Tribunal*, G.R. No. 187478, December 21, 2009, 608 SCRA 733.

[39] 373 Phil. 896 (1999).

[When] a candidate has received popular mandate, overwhelmingly and clearly expressed, all possible doubts should be resolved in favor of the candidate's eligibility for to rule otherwise is to defeat the will of the people. Above and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred.

No Basis to Rule that the Comelec Committed Grave Abuse of Discretion.

As my ***last point***, the Comelec *en banc* considered and accepted as its factual finding that Arnado's explanation on the use of his US passport was sufficient justification to conclude that he did not abandon his Oath of Renunciation. This finding is undeniably based on evidence on record as the above citations show. In a Rule 64 petition, whether this conclusion is correct or incorrect is not material for as long as it is made on the basis of evidence on record, and was made within the contemplation of the applicable law.[40]

In other words, the Comelec *en banc* properly exercised its discretion in acting on the matter; thus, even if it had erred in its conclusions, any error in reading the evidence and in applying the law was not sufficiently grave to affect the exercise of its jurisdiction.[41] From these perspectives, this Court has no recourse but to dismiss the present petition for failure to show any grave abuse of discretion on the part of the Comelec.

In these lights, I vote for the dismissal of the petition.

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[40] Section 5, Rule 64 of the Rules of Court states that "[f]indings of facts of the Commission supported by substantial evidence shall be final and non-reviewable."

[41] *Mitra v. Commission on Elections*, G.R. No. 191938, July 2, 2010, 622 SCRA 744.

EN BANC

[G.R. No. 202242. April 16, 2013]

FRANCISCO I. CHAVEZ, *petitioner, vs.* **JUDICIAL AND BAR COUNCIL, SEN. FRANCIS JOSEPH G. ESCUDERO and REP. NIEL C. TUPAS, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL AND BAR COUNCIL (JBC); CONGRESS IS ENTITLED TO ONLY ONE (1) SEAT IN THE JBC.— [T]he Court cannot accede to the argument of plain oversight in order to justify constitutional construction. As stated in the July 17, 2012 Decision, in opting to use the singular letter "*a*" to describe "*representative of Congress*," the Filipino people through the Framers intended that Congress be entitled to only one (1) seat in the JBC. Had the intention been otherwise, the Constitution could have, in no uncertain terms, so provided, as can be read in its other provisions. x x x [T]o say that the Framers simply failed to adjust Section 8, Article VIII, by sheer inadvertence, to their decision to shift to a bicameral form of the legislature, is not persuasive enough. Respondents cannot just lean on plain oversight to justify a conclusion favorable to them. It is very clear that the Framers were not keen on adjusting the provision on congressional representation in the JBC because it was not in the exercise of its primary function – to legislate. JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function.

2. ID.; ID.; ID.; ID.; UNDERLYING REASON FOR CONGRESS' LIMITED PARTICIPATION IN THE JBC.— The underlying reason for such a limited participation can easily be discerned. Congress has two (2) Houses. The need to recognize the existence and the role of each House is essential considering that the Constitution employs precise language in laying down the functions which particular House plays, regardless of whether the two Houses consummate an official act by voting jointly or separately. Whether in the exercise of its legislative

or its non-legislative functions such as *inter alia*, the power of appropriation, the declaration of an existence of a state of war, canvassing of electoral returns for the President and Vice-President, and impeachment, the dichotomy of each House must be acknowledged and recognized considering the interplay between these two Houses. In all these instances, each House is constitutionally granted with powers and functions peculiar to its nature and with keen consideration to 1) its relationship with the other chamber; and 2) in consonance with the principle of checks and balances, as to the other branches of government. In checkered contrast, there is essentially **no interaction between the two Houses in their participation in the JBC.** No mechanism is required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Rather, in the creation of the JBC, the Framers arrived at a unique system by adding to the four (4) regular members, three (3) representatives from the major branches of government - the Chief Justice as *ex-officio* Chairman (representing the Judicial Department), the Secretary of Justice (representing the Executive Department), and a representative of the Congress (representing the Legislative Department). The **total** is **seven (7)**, not eight. In so providing, the Framers simply gave recognition to the Legislature, not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government.

3. ID.; ID.; ID.; ID.; EITHER A SENATOR OR A MEMBER OF THE HOUSE OF REPRESENTATIVES IS CONSTITUTIONALLY EMPOWERED TO REPRESENT THE ENTIRE CONGRESS; HE IS ENTITLED TO ONE FULL VOTE.— The argument that a senator cannot represent a member of the House of Representatives in the JBC and *vice-versa* is, thus, misplaced. In the JBC, any member of Congress, whether from the Senate or the House of Representatives, is *constitutionally empowered* to represent the *entire* Congress. It may be a constricted constitutional authority, but it is not an absurdity. From this score stems the conclusion that the lone representative of Congress is entitled to one full vote. This pronouncement effectively disallows the scheme of splitting the said vote into half (1/2), between two representatives of Congress. Not only can this unsanctioned practice cause disorder in the voting process, it is clearly against the essence of what the Constitution authorized. After all, basic and reasonable is the rule that what

cannot be legally done directly cannot be done indirectly. To permit or tolerate the splitting of one vote into two or more is clearly a constitutional circumvention that cannot be countenanced by the Court. Succinctly put, when the Constitution envisioned one member of Congress sitting in the JBC, it is sensible to presume that this representation carries with him one full vote.

4. ID.; ID.; ID.; DOCTRINE OF OPERATIVE FACTS, APPLIED; NOTWITHSTANDING THE FINDING OF UNCONSTITUTIONALITY IN THE COMPOSITION OF THE JBC, ALL ITS PRIOR OFFICIAL ACTIONS ARE VALID.— Well-settled is the rule that acts done in violation of the Constitution no matter how frequent, usual or notorious cannot develop or gain acceptance under the doctrine of estoppel or laches, because once an act is considered as an infringement of the Constitution it is void from the very beginning and cannot be the source of any power or authority. It would not be amiss to point out, however, that as a general rule, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. This rule, however, is not absolute. Under the *doctrine of operative facts*, actions previous to the declaration of unconstitutionality are legally recognized. They are not nullified. This is essential in the interest of fair play. x x x Under the circumstances, the Court finds the exception applicable in this case and holds that notwithstanding its finding of unconstitutionality in the current composition of the JBC, all its prior official actions are nonetheless valid.

5. ID.; ID.; ID.; THE COURT HAS NO POWER TO ADD ANOTHER MEMBER OF JBC BY JUDICIAL CONSTRUCTION.— [T]he Court cannot supply the legislative omission. According to the rule of *casus omissus* "a case omitted is to be held as intentionally omitted." "The principle proceeds from a reasonable certainty that a particular person, object or thing has been omitted from a legislative enumeration." Pursuant to this, "the Court cannot under its power of interpretation supply the omission even though the omission may have resulted from *inadvertence* or because the case in question was not foreseen or contemplated." "The Court cannot supply what it thinks the legislature would have supplied had its attention been called

to the omission, as that would be *judicial legislation*." Stated differently, the Court has no power to add another member by judicial construction. x x x [N]o amount of practical logic or convenience can convince the Court to perform either an excision or an insertion that will change the manifest intent of the Framers. To broaden the scope of congressional representation in the JBC is tantamount to the inclusion of a subject matter which was not included in the provision as enacted. True to its constitutional mandate, the Court cannot craft and tailor constitutional provisions in order to accommodate all of situations no matter how ideal or reasonable the proposed solution may sound. To the exercise of this intrusion, the Court declines.

ABAD, *J., dissenting opinion*:

POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL AND BAR COUNCIL (JBC); THE SENATE AND THE HOUSE OF REPRESENTATIVES SHOULD HAVE ONE REPRESENTATIVE EACH IN THE JBC— [T]o insist that only one member of Congress from either the Senate or the House of Representatives should sit at any time in the JBC, is to ignore the fact that they are still separate and distinct from each other although they are both involved in law-making. Both legislators are elected differently, maintain separate administrative organizations, and deliberate on laws independently. In fact, neither the Senate nor the House of Representatives can by itself claim to represent the Congress. Again, that the framers of the 1987 Constitution did not intend to limit the term "Congress" to just either of the two Houses can be seen from the words that they used in crafting Section 8(l). While the provision provides for just "*a representative of the Congress*," it also provides that such representation is "*ex officio*" or "by virtue of one's office, or position." Under the Senate rules, the Chairperson of its Justice Committee is automatically the Senate representative to the JBC. In the same way, under the House of Representatives rules, the Chairperson of its Justice Committee is the House representative to the JBC. Consequently, there are actually two persons in Congress who hold separate offices or positions with the attached function of sitting in the JBC. If the Court adheres to a literal translation of Section 8(1), no representative from Congress will qualify as "*ex officio*"

member of the JBC. This would deny Congress the representation that the framers of the 1987 Constitution intended it to have. Having said that the Senate and the House of Representatives should have one representative each in the JBC, it is logical to conclude that each should also have the right to cast one full vote in its deliberations. To split the vote between the two legislators would be an absurdity since it would diminish their standing and make them second class members of the JBC, something that the Constitution clearly does not contemplate.

LEONEN, *J., dissenting oponion*:

POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL AND BAR COUNCIL (JBC); IN KEEPING WITH THE CONSTITUTIONAL PROJECT OF A BICAMERAL CONGRESS, A SENATOR AND A MEMBER OF THE HOUSE OF REPRESENTATIVES SHOULD SIT IN THE JBC SO THAT CONGRESS CAN BE FULLY REPRESENTED.— Discerning that there should be a Senator and a Member of the House of Representatives that sit in the Judicial and Bar Council so that Congress can be fully represented *ex officio* is not judicial activism. It is in keeping with the constitutional project of a bicameral Congress that is effective whenever and wherever it is represented. It is in tune with how our people understand Congress as described in the fundamental law. It is consistent with our duty to read the authoritative text of the Constitution so that ordinary people who seek to understand this most basic law through Our decisions would understand that beyond a single isolated text — even beyond a preposition in Article VIII, Section 8 (1), our primordial values and principles are framed, congealed and will be given full effect.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for petitioner.

R E S O L U T I O N

MENDOZA, *J.*:

This resolves the *Motion for Reconsideration*[1] filed by the Office of the Solicitor General *(OSG)* on behalf of the respondents, Senator Francis Joseph G. Escudero and Congressman Niel C. Tupas, Jr. *(respondents)*, duly opposed[2] by the petitioner, former Solicitor General Francisco I. Chavez *(petitioner)*.

By way of recapitulation, the present action stemmed from the unexpected departure of former Chief Justice Renato C. Corona on May 29, 2012, and the nomination of petitioner, as his potential successor. In his initiatory pleading, petitioner asked the Court to determine 1] whether the first paragraph of Section 8, Article VIII of the 1987 Constitution allows more than one (1) member of Congress to sit in the JBC; and 2] if the practice of having two (2) representatives from each House of Congress with one (1) vote each is sanctioned by the Constitution.

On July 17, 2012, the Court handed down the assailed subject decision, disposing the same in the following manner:

> WHEREFORE, the petition is GRANTED. The current numerical composition of the Judicial and Bar Council is declared UNCONSTITUTIONAL. The Judicial and Bar Council is hereby enjoined to reconstitute itself so that only one (1) member of Congress will sit as a representative in its proceedings, in accordance with Section 8(1), Article VIII of the 1987 Constitution.
>
> This disposition is immediately executory.
>
> SO ORDERED.

On July 31, 2012, following respondents' motion for reconsideration and with due regard to Senate Resolution Nos.

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[1] *Rollo*, pp. 257-286.

[2] *Id.* at 287-298.

111,[3] 112,[4] 113,[5] and 114,[6] the Court set the subject motion for oral arguments on August 2, 2012.[7] On August 3, 2012, the Court discussed the merits of the arguments and agreed, in the meantime, to suspend the effects of the second paragraph of the dispositive portion of the July 17, 2012 Decision which decreed that it was immediately executory. The decretal portion of the August 3, 2012 Resolution[8] reads:

> WHEREFORE, the parties are hereby directed to submit their respective MEMORANDA within ten (10) days from notice. Until further orders, the Court hereby SUSPENDS the effect of the second paragraph of the dispositive portion of the Court's July 17, 2012 Decision, which reads: "This disposition is immediately executory."[9]

Pursuant to the same resolution, petitioner and respondents filed their respective memoranda.[10]

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[3] Entitled "Resolution expressing the sense of the Senate that the Judicial and Bar Council (JBC) defer the consideration of all nominees and the preparation of the short list to be submitted to the President for the position of Chief Justice of the Supreme Court"; *id.* at 303-304.

[4] Entitled "Resolution expressing anew the sense of the Senate that the Senate and House of Representatives should have one (1) representative each in the Judicial and Bar Council (JBC) and that each representative is entitled to a full vote"; *id.* at 305-307.

[5] Entitled "Resolution to file an urgent motion with the Supreme Court to set for oral argument the motion for reconsideration filed by the representatives of Congress to the Judicial and Bar Council (JBC) in the case of *Francisco Chavez v. Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Niel Tupas [Jr.] [,] G.R. [No.] 202242* considering the primordial importance of the constitutional issues involved;" *id.* at 308-310.

[6] Entitled "Resolution authorizing Senator Joker P. Arroyo to argue, together with the Counsel-of-record, the motion for reconsideration filed by the representative of the Senate to the Judicial and Bar Council in the case of *Francisco Chavez v. Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Niel Tupas, Jr."; id.* at 311-312.

[7] *Id.* at 313-314.

[8] *Id.* at (318-I)-(318-K).

[9] *Id.* at 318-J.

[10] Petitioner's Memorandum, *id.* at 326-380; Respondents' Memorandum, *id.* at 381-424.

Brief Statement of the Antecedents

In this disposition, it bears reiterating that from the birth of the Philippine Republic, the exercise of appointing members of the Judiciary has always been the exclusive prerogative of the executive and legislative branches of the government. Like their progenitor of American origins, both the Malolos Constitution[11] and the 1935 Constitution[12] vested the power to appoint the members of the Judiciary in the President, subject to confirmation by the Commission on Appointments. It was during these times that the country became witness to the deplorable practice of aspirants seeking confirmation of their appointment in the Judiciary to ingratiate themselves with the members of the legislative body.[13]

Then, under the 1973 Constitution,[14] with the fusion of the executive and legislative powers in one body, the appointment of judges and justices ceased to be subject of scrutiny by another body. The power became exclusive and absolute to the Executive, subject only to the condition that the appointees must have all the qualifications and none of the disqualifications.

Prompted by the clamor to rid the process of appointments to the Judiciary of the evils of political pressure and partisan activities,[15] the members of the Constitutional Commission saw

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[11] Malolos Constitution Article 80 Title X. – The Chief Justice of the Supreme Court and the Solicitor General shall be chosen by the National Assembly in concurrence with the President of the Republic and the Secretaries of the Government, and shall be absolutely independent of the Legislative and Executive Powers.

[12] 1935 Constitution Article VIII, Section 5. – The Members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments.

[13] 1 Records of the Constitutional Commission Proceedings and Debates, 437.

[14] Section 4 Article X of the 1973 Constitution provides: "The Members of the Supreme Court and judges of inferior courts shall be appointed by the President."

[15] 1 Records, Constitutional Commission, Proceedings and Debates, p. 487.

it wise to create a separate, competent and independent body to recommend nominees to the President. Thus, it conceived of a body, representative of all the stakeholders in the judicial appointment process, and called it the Judicial and Bar Council *(JBC)*. The Framers carefully worded Section 8, Article VIII of the 1987 Constitution in this wise:

> Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and **a representative of the Congress** as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

From the moment of the creation of the JBC, Congress designated one (1) representative to sit in the JBC to act as one of the *ex-officio* members.[16] Pursuant to the constitutional provision that Congress is entitled to one (1) representative, each House sent a representative to the JBC, not together, but alternately or by rotation.

In 1994, the seven-member composition of the JBC was substantially altered. An eighth member was added to the JBC as the two (2) representatives from Congress began sitting simultaneously in the JBC, with each having one-half (1/2) of a vote.[17]

In 2001, the JBC *En Banc* decided to allow the representatives from the Senate and the House of Representatives one full vote each.[18] It has been the situation since then.

Grounds relied upon by Respondents

Through the subject motion, respondents pray that the Court reconsider its decision and dismiss the petition on the following

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[16] List of JBC Chairpersons, *Ex-Officio* and Regular Members, *Ex–Officio* Secretaries and Consultants, issued by the Office of the Executive Officer, Judicial and Bar Council, *rollo*, pp. 62-63.

[17] *Id.*

[18] *Id.* at 80, citing Minutes of the 1st *En Banc* Executive Meeting, January 12, 2000 and Minutes of the 12th *En Banc* Meeting, May 30, 2001.

grounds: 1] that allowing only one representative from Congress in the JBC would lead to *absurdity* considering its bicameral nature; 2] that the failure of the Framers to make the proper adjustment when there was a shift from unilateralism to bicameralism was a *plain oversight*; 3] that two representatives from Congress would not subvert the intention of the Framers to insulate the JBC from political partisanship; and 4] that the rationale of the Court in declaring a seven-member composition would provide a solution should there be a stalemate is not exactly correct.

While the Court may find some sense in the reasoning in amplification of the third and fourth grounds listed by respondents, still, it finds itself unable to reverse the assailed decision on the principal issues covered by the first and second grounds for lack of merit. Significantly, the conclusion arrived at, with respect to the first and second grounds, carries greater bearing in the final resolution of this case.

As these two issues are interrelated, the Court shall discuss them jointly.

Ruling of the Court

The Constitution evinces the direct action of the Filipino people by which the fundamental powers of government are established, limited and defined and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politic.[19] The Framers reposed their wisdom and vision on one *suprema lex* to be the ultimate expression of the principles and the framework upon which government and society were to operate. Thus, in the interpretation of the constitutional provisions, the Court firmly relies on the basic postulate that the Framers mean what they say. The language used in the Constitution must be taken to have been deliberately chosen for a definite purpose. Every word employed in the Constitution must be interpreted to exude its deliberate intent which must be maintained inviolate against disobedience

[19] Malcolm, *The Constitutional Law of the Philippine Islands* (2nd ed. 1926), p. 26.

and defiance. What the Constitution clearly says, according to its text, compels acceptance and bars modification even by the branch tasked to interpret it.

For this reason, the Court cannot accede to the argument of plain oversight in order to justify constitutional construction. As stated in the July 17, 2012 Decision, in opting to use the singular letter "*a*" to describe "*representative of Congress*," the Filipino people through the Framers intended that Congress be entitled to only one (1) seat in the JBC. Had the intention been otherwise, the Constitution could have, in no uncertain terms, so provided, as can be read in its other provisions.

A reading of the 1987 Constitution would reveal that several provisions were indeed adjusted as to be in tune with the shift to bicameralism. One example is Section 4, Article VII, which provides that a tie in the presidential election shall be broken "*by a majority of all the Members of both Houses of the Congress, voting separately.*"[20] Another is Section 8 thereof which requires the nominee to replace the Vice-President to be confirmed "*by a majority of all the Members of both Houses of the Congress, voting separately.*"[21] Similarly, under

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[20] 1987 Constitution, Article VII, Section 4. – The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

x x x x x x x x x

The person having the highest number of votes shall be proclaimed elected, but **in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, *voting separately*.** (Emphasis supplied)

x x x x x x x x x.

[21] 1987 Constitution, Article VII, Section 9. – Whenever there is a vacancy in the Office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the Members of the Senate and the House of Representatives who shall assume office **upon**

Section 18, the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus may be revoked or continued by the Congress, voting separately, by a vote of at least a majority of all its Members."*[22] In all these provisions, the bicameral nature of Congress was recognized and, clearly, the corresponding adjustments were made as to how a matter would be handled and voted upon by its two Houses.

Thus, to say that the Framers simply failed to adjust Section 8, Article VIII, by sheer inadvertence, to their decision to shift to a bicameral form of the legislature, is not persuasive enough. Respondents cannot just lean on plain oversight to justify a conclusion favorable to them. It is very clear that the Framers were not keen on adjusting the provision on congressional representation in the JBC because it was not in the exercise of its primary function – to legislate. JBC was created to support the executive power to appoint, and Congress, as one whole body, was merely assigned a contributory non-legislative function.

The underlying reason for such a limited participation can easily be discerned. Congress has two (2) Houses. The need

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confirmation by a majority vote of all the Members of both Houses of the Congress, *voting separately*. (Emphasis supplied)

[22] 1987 Constitution, Article VII, Section 18. – The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. **The Congress, *voting jointly*, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension**, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it. (Emphasis supplied)

to recognize the existence and the role of each House is essential considering that the Constitution employs precise language in laying down the functions which particular House plays, regardless of whether the two Houses consummate an official act by voting jointly or separately. Whether in the exercise of its legislative[23] or its non-legislative functions such as *inter alia*, the power of appropriation,[24] the declaration of an existence of a state of war,[25] canvassing of electoral returns for the President and Vice-President,[26] and

[23] 1987 Constitution, Article VI Section 27(1). – Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

[24] 1987 Constitution, Article VI Section 24. – All appropriation, revenue or tariff bills, bills authorizing increase of public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

[25] 1987 Constitution, Article VI Section 23 (1). – The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

[26] 1987 Constitution, Article VII Section 4. – The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes. The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be

impeachment,[27] the dichotomy of each House must be acknowledged and recognized considering the interplay between these two Houses. In all these instances, each House is constitutionally granted with powers and functions peculiar to its nature and with keen consideration to 1) its relationship with the other chamber; and 2) in consonance with the principle of checks and balances, as to the other branches of government.

In checkered contrast, there is essentially **no interaction between the two Houses in their participation in the JBC.** No mechanism is required between the Senate and the House of Representatives in the screening and nomination of judicial officers. Rather, in the creation of the JBC, the Framers arrived at a unique system by adding to the four (4) regular members, three (3) representatives from the major branches of government - the Chief Justice as *ex-officio* Chairman (representing the Judicial Department), the Secretary of Justice (representing the Executive Department), and a representative of the Congress (representing the Legislative Department). The **total** is **seven (7)**, not eight. In so providing, the Framers simply gave recognition to the Legislature, not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government.

On this score, a Member of Congress, Hon. Simeon A. Datumanong, from the Second District of Maguindanao, submitted

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chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

[27] 1987 Constitution, Article XI Section 3 (1). – The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

x x x x x x x x x

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

his well-considered position[28] to then Chief Justice Reynato S. Puno:

> I humbly reiterate my position that there should be **only one representative** of Congress in the JBC in accordance with Article VIII, Section 8 (1) of the 1987 Constitution x x x.
>
> The aforesaid provision is **clear** and **unambiguous** and does not need any further interpretation. Perhaps, it is apt to mention that the oft-repeated doctrine that "construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them."
>
> Further, to allow Congress to **have two representatives** in the Council, with one vote each, is to **negate the principle of equality among the three branches of government** which is enshrined in the Constitution.
>
> In view of the foregoing, I vote for the proposition that the Council should adopt the rule of single representation of Congress in the JBC in order to respect and give the right meaning to the above-quoted provision of the Constitution. (Emphases and underscoring supplied)

On March 14, 2007, then Associate Justice Leonardo A. Quisumbing, also a JBC Consultant, submitted to the Chief Justice and *ex-officio* JBC Chairman his opinion,[29] which reads:

> 8. Two things can be gleaned from the excerpts and citations above: the creation of the JBC is intended to curtail the influence of politics in Congress in the appointment of judges, and the understanding is that **seven (7) persons** will compose the JBC. As such, the interpretation of **two votes** for Congress **runs counter to the intendment of the framers.** Such interpretation actually gives Congress more influence in the

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[28] Dated March 27, 2007; Annex "D", *rollo*, p. 104.

[29] Annex C, *id.* at 95. Quoting the interpretation of Article VIII, Section (1) of the Constitution by Fr. Joaquin Bernas in page 984 of his book, *The 1987 Constitution of the Republic of the Philippines, A Commentary*. He quoted another author, Hector de Leon, and portions of the decisions of this Court in *Flores v. Drilon*, and *Escalante v. Santos*, before extensively quoting the Record of the Constitutional Commission of 1986 (pages 444 to 491).

> appointment of judges. Also, two votes for Congress **would increase the number of JBC members to eight**, which could lead to voting deadlock by reason of even-numbered membership, and a clear violation of 7 enumerated members in the Constitution. (Emphases and underscoring supplied)

In an undated position paper,[30] then Secretary of Justice Agnes VST Devanadera opined:

> As can be gleaned from the above constitutional provision, the JBC is composed of **seven (7) representatives** coming from different sectors. From the enumeration it is patent that each category of members pertained to a **single individual only**. Thus, while we do not lose sight of the bicameral nature of our legislative department, it is beyond dispute that Art. VIII, Section 8 (1) of the 1987 Constitution is explicit and specific that "Congress" shall have only "xxx **a representative**." Thus, two (2) representatives from Congress would **increase** the number of JBC members to **eight (8), a number beyond what the Constitution has contemplated**. (Emphases and underscoring supplied)

In this regard, the scholarly dissection on the matter by retired Justice Consuelo Ynares-Santiago, a former JBC consultant, is worth reiterating.[31] Thus:

> A perusal of the records of the Constitutional Commission reveals that the composition of the JBC reflects the Commission's desire "to have in the Council a representation for the major elements of the community." xxx The *ex-officio* members of the Council consist of representatives from the three main branches of government while the regular members are composed of various stakeholders in the judiciary. **The unmistakeable tenor of Article VIII, Section 8(1) was to treat each *ex-officio* member as representing one co-equal branch of government**. xxx Thus, the JBC was designed to have **seven voting members** with the three *ex-officio* members having equal say in the choice of judicial nominees.
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[30] Annex "E", *id.* at 1205.

[31] *Rollo*, pp. 91-93.

No parallelism can be drawn between the representative of Congress in the JBC and the exercise by Congress of its legislative powers under Article VI and constituent powers under Article XVII of the Constitution. Congress, in relation to the executive and judicial branches of government, is constitutionally treated as another co-equal branch in the matter of its representative in the JBC. On the other hand, the exercise of legislative and constituent powers requires the Senate and the House of Representatives to coordinate and act as distinct bodies in furtherance of Congress' role under our constitutional scheme. **While the latter justifies and, in fact, necessitates the separateness of the two Houses of Congress as they relate *inter se*, no such dichotomy need be made when Congress interacts with the other two co-equal branches of government.**

It is more in keeping with the co-equal nature of the three governmental branches to assign the same weight to considerations that any of its representatives may have regarding aspiring nominees to the judiciary. The representatives of the Senate and the House of Representatives act as such for one branch and should not have any more quantitative influence as the other branches in the exercise of prerogatives evenly bestowed upon the three. Sound reason and principle of equality among the three branches support this conclusion. [Emphases and underscoring supplied]

The argument that a senator cannot represent a member of the House of Representatives in the JBC and *vice-versa* is, thus, misplaced. In the JBC, any member of Congress, whether from the Senate or the House of Representatives, is *constitutionally empowered* to represent the *entire* Congress. It may be a constricted constitutional authority, but it is not an absurdity.

From this score stems the conclusion that the lone representative of Congress is entitled to one full vote. This pronouncement effectively disallows the scheme of splitting the said vote into half (1/2), between two representatives of Congress. Not only can this unsanctioned practice cause disorder in the voting process, it is clearly against the essence of what the Constitution authorized. After all, basic and reasonable is the rule that what cannot be legally done directly cannot be done indirectly. To permit or tolerate the splitting of one vote into two or more is clearly a constitutional circumvention that

cannot be countenanced by the Court. Succinctly put, when the Constitution envisioned one member of Congress sitting in the JBC, it is sensible to presume that this representation carries with him one full vote.

It is also an error for respondents to argue that the President, in effect, has more influence over the JBC simply because all of the regular members of the JBC are his appointees. The principle of checks and balances is still safeguarded because the appointment of all the regular members of the JBC is subject to a stringent process of confirmation by the Commission on Appointments, which is composed of members of Congress.

Respondents' contention that the current irregular composition of the JBC should be accepted, simply because it was only questioned for the first time through the present action, deserves scant consideration. Well-settled is the rule that acts done in violation of the Constitution no matter how frequent, usual or notorious cannot develop or gain acceptance under the doctrine of estoppel or laches, because once an act is considered as an infringement of the Constitution it is void from the very beginning and cannot be the source of any power or authority.

It would not be amiss to point out, however, that as a general rule, an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all. This rule, however, is not absolute. Under the *doctrine of operative facts*, actions previous to the declaration of unconstitutionality are legally recognized. They are not nullified. This is essential in the interest of fair play. To reiterate the doctrine enunciated in *Planters Products, Inc. v. Fertiphil Corporation*:[32]

> The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration. The

[32] G.R. No. 166006, March 14, 2008, 548 SCRA 485.

doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it.[33]

Under the circumstances, the Court finds the exception applicable in this case and holds that notwithstanding its finding of unconstitutionality in the current composition of the JBC, all its prior official actions are nonetheless valid.

Considering that the Court is duty bound to protect the Constitution which was ratified by the direct action of the Filipino people, it cannot correct what respondents perceive as a mistake in its mandate. Neither can the Court, in the exercise of its power to interpret the spirit of the Constitution, read into the law something that is contrary to its express provisions and justify the same as correcting a perceived inadvertence. To do so would otherwise sanction the Court action of making amendment to the Constitution through a judicial pronouncement.

In other words, the Court cannot supply the legislative omission. According to the rule of *casus omissus* "a case omitted is to be held as intentionally omitted."[34] "The principle proceeds from a reasonable certainty that a particular person, object or thing has been omitted from a legislative enumeration."[35] Pursuant to this, "the Court cannot under its power of interpretation supply the omission even though the omission may have resulted from *inadvertence* or because the case in question was not foreseen or contemplated."[36] "The Court cannot supply what it thinks the legislature would have supplied had its attention been called to the omission, as that would be *judicial legislation*."[37]

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[33] *Id.* at 516-517. (Citations omitted.)

[34] *Black's Law Dictionary*, Fifth ed., p. 198.

[35] Agpalo, *Statutory Construction*, 2009 ed., p. 231.

[36] *Id.*, citing *Cartwrite v. Cartwrite*, 40 A2d 30, 155 ALR 1088 (1944).

[37] *Id.*, Agpalo, p. 232.

Stated differently, the Court has no power to add another member by judicial construction.

The call for judicial activism fails to stir the sensibilities of the Court tasked to guard the Constitution against usurpation. The Court remains steadfast in confining its powers in the sphere granted by the Constitution itself. Judicial activism should never be allowed to become judicial exuberance.[38] In cases like this, no amount of practical logic or convenience can convince the Court to perform either an excision or an insertion that will change the manifest intent of the Framers. To broaden the scope of congressional representation in the JBC is tantamount to the inclusion of a subject matter which was not included in the provision as enacted. True to its constitutional mandate, the Court cannot craft and tailor constitutional provisions in order to accommodate all of situations no matter how ideal or reasonable the proposed solution may sound. To the exercise of this intrusion, the Court declines.

WHEREFORE, the Motion for Reconsideration filed by respondents is hereby **DENIED.**

The suspension of the effects of the second paragraph of the dispositive portion of the July 17, 2012 Decision of the Court, which reads, "This disposition is immediately executory," is hereby **LIFTED.**

SO ORDERED.

Carpio, Leonardo-de Castro, Peralta, Bersamin, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Del Castillo, J., joins the dissent of *J.* Abad.

Abad and Leonen, JJ., see separate dissenting opinions.

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[38] Dissenting Opinion, Chief Justice Panganiban, *Central Bank (Now Bangko Sentral Ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299, citing *Peralta v. COMELEC*, No. L-47771, March 11, 1978, 82 SCRA 30, 77, citing concurring and dissenting opinion of former Chief Justice Fernando, citing Malcolm.

Sereno, C.J., no part as she is Chairperson of JBC.

Velasco, Jr., J., no part due to participation in JBC.

Brion, J., no part.

DISSENTING OPINION

ABAD, *J.*:

On July 17, 2012, the Court rendered a Decision[1] granting the petition for declaration of unconstitutionality, prohibition, and injunction filed by petitioner Francisco I. Chavez, and declaring that the current numerical composition of the Judicial and Bar Council (JBC) is unconstitutional. The Court also enjoined the JBC to reconstitute itself so that only one member of Congress will sit as a representative in its proceedings, in accordance with Section 8(1), Article VIII of the 1987 Constitution.

On July 24, 2012, respondents Senator Francis Joseph G. Escudero and Congressman Niel C. Tupas, Jr. moved for reconsideration.[2] The Court then conducted and heard the parties in oral arguments on the following issues:

1. Whether or not the current practice of the JBC to perform its functions with eight members, two of whom are members of Congress, runs counter to the letter and spirit of Section 8(1), Article VIII of the 1987 Constitution.

   A. Whether or not the JBC should be composed of seven members only.

   B. Whether or not Congress is entitled to more than one seat in the JBC.

   C. Assuming Congress is entitled to more than one seat, whether or not each representative of Congress should be entitled to exercise one whole vote.

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[1] *Rollo*, pp. 226-250.

[2] *Id.* at 257-284.

I maintain my dissent to the majority opinion now being reconsidered.

To reiterate, the vital question that needs to be resolved is: whether or not the Senate and the House of Representatives are entitled to one representative each in the JBC, both with the right to cast one full vote in its deliberations.

At the core of the present controversy is Section 8(1), Article VIII of the 1987 Constitution, which provides that:

> Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and **a representative of the Congress** as *ex officio* Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. (Emphasis supplied)

In interpreting Section 8(1) above, the majority opinion reiterated that in opting to use the singular letter *"a"* to describe *"representative of the Congress,"* the Filipino people through the framers of the 1987 Constitution intended Congress to just have one representative in the JBC. The majority opinion added that there could not have been any plain oversight in the wordings of the provision since the other provisions of the 1987 Constitution were amended accordingly with the shift to a bicameral legislative body.

The mere fact, however, that adjustments were made in some provisions should not mislead the Court into concluding that all provisions have been amended to recognize the bicameral nature of Congress. As I have previously noted in my dissenting opinion, Fr. Joaquin G. Bernas, a member of the Constitutional Commission himself, admitted that the committee charged with making adjustments in the previously passed provisions covering the JBC, failed to consider the impact of the changed character of the Legislature on the inclusion of *"a representative of the Congress"* in the membership of the JBC.[3]

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[3] *http://opinion.inquirer.net/31813/jbc-odds-and-ends* (last accessed February 15, 2013).

Indeed, to insist that only one member of Congress from either the Senate or the House of Representatives should sit at any time in the JBC, is to ignore the fact that they are still separate and distinct from each other although they are both involved in law-making. Both legislators are elected differently, maintain separate administrative organizations, and deliberate on laws independently. In fact, neither the Senate nor the House of Representatives can by itself claim to represent the Congress.

Again, that the framers of the 1987 Constitution did not intend to limit the term "Congress" to just either of the two Houses can be seen from the words that they used in crafting Section 8(1). While the provision provides for just *"a representative of the Congress,"* it also provides that such representation is *"ex officio"* or "by virtue of one's office, or position."[4]

Under the Senate rules, the Chairperson of its Justice Committee is automatically the Senate representative to the JBC. In the same way, under the House of Representatives rules, the Chairperson of its Justice Committee is the House representative to the JBC. Consequently, there are actually two persons in Congress who hold separate offices or positions with the attached function of sitting in the JBC. If the Court adheres to a literal translation of Section 8(1), no representative from Congress will qualify as "*ex officio*" member of the JBC. This would deny Congress the representation that the framers of the 1987 Constitution intended it to have.

Having said that the Senate and the House of Representatives should have one representative each in the JBC, it is logical to conclude that each should also have the right to cast one full vote in its deliberations. To split the vote between the two legislators would be an absurdity since it would diminish their standing and make them second class members of the JBC, something that the Constitution clearly does not contemplate. Indeed, the JBC abandoned the half-a-vote practice on January 12, 2000 and recognized the right of both legislators to cast

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[4] *Webster's New World College Dictionary*, 3rd Edition, p. 477.

one full vote each. Only by recognizing this right can the true spirit and reason of Section 8(1) be attained.

For the above reasons, I vote to **GRANT** the motion for reconsideration.

DISSENTING OPINION

LEONEN, *J.*:

I dissent.

Both the Senate and the House of Representatives must be represented in the Judicial and Bar Council. This is the Constitution's mandate read as a whole and in the light of the ordinary and contemporary understanding of our people of the structure of our government. Any other interpretation diminishes Congress and negates the effectivity of its representation in the Judicial and Bar Council.

It is a Constitution we are interpreting. More than privileging a textual preposition, our duty is to ensure that the constitutional project ratified by our people is given full effect.

At issue in this case is the interpretation of Article VIII, Section 8 of the Constitution which provides the following:

> Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as *ex officio* Chairman, the Secretary of Justice, and ***a representative of the Congress as ex officio Members***, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector. (Emphasis provided)

Mainly deploying *verba legis* as its interpretative modality, the main opinion chooses to focus on the article "a." As correctly pointed out in the original dissent of Justice Robert Abad, the entire phrase includes the words "representative of Congress" and "*ex officio* Members." In the context of the constitutional plan involving a bicameral Congress, these words create ambiguity.

A Bicameral Congress

Our Constitution creates a Congress consisting of two chambers. Thus, in Article VI, Section 1, the Constitution provides the following:

> The legislative power shall be vested in ***the Congress of the Philippines which shall consist of a Senate and a House of Representatives*** x x x. (Emphasis provided)

Senators are "elected at large by the qualified voters of the Philippines."[1] Members of the House of Representatives, on the other hand, are elected by legislative districts[2] or through the party list system.[3] The term of a Senator[4] is different from that of a Member of the House of Representatives.[5] Therefore, the Senate and the House of Representatives while component parts of the Congress are not the same in terms of their representation. The very rationale of a bicameral system is to have the Senators represent a national constituency. Representatives of the House of Representatives, on the other hand, are dominantly from legislative districts except for one fifth which are from the party list system.

Each chamber is organized separately.[6] The Senate and the House each promulgates their own rules of procedure.[7] Each chamber maintains separate Journals.[8] They each have separate

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[1] CONSTITUTION, Art. VI, Sec. 2.

[2] CONSTITUTION, Art. VI, Sec. 5 (1).

[3] CONSTITUTION, Art. VI, Sec. 5 (2). See also the recent case of *Atong Paglaum v. COMELEC, et al.,* G.R. No. 203766, for the most recent discussion on the nature of the party list system.

[4] The term of a senator is six years, extendible for another term. CONSTITUTION, Art. VI, Sec. 4.

[5] The term of a member of the House of Representatives is three years, and may be extendible for three consecutive terms. CONSTITUTION, Art. VI, Sec. 7.

[6] CONSTITUTION, Art. VI, Sec. 16.

[7] CONSTITUTION, Art. VI, Sec. 16 (1).

[8] CONSTITUTION, Art. VI, Sec. 16 (4), par. (1).

Records of their proceedings.[9] The Senate and the House of Representatives discipline their own respective members.[10]

To belabor the point: There is no presiding officer for the Congress of the Philippines, but there is a Senate President and a Speaker of the House of Representatives. There is no single journal for the Congress of the Philippines, but there is a journal for the Senate and a journal for the House of Representatives. There is no record of proceedings for the entire Congress of the Philippines, but there is a Record of proceedings for the Senate and a Record of proceedings for the House of Representatives. The Congress of the Philippines does not discipline its members. It is the Senate that promulgates its own rules and disciplines its members. Likewise, it is the House that promulgates its own rules and disciplines its members.

No Senator reports to the Congress of the Philippines. Rather, he or she reports to the Senate. No Member of the House of Representatives reports to the Congress of the Philippines. Rather, he or she reports to the House of Representatives.

Congress, therefore, is the Senate and the House of Representatives. Congress does not exist separate from the Senate and the House of Representatives.

Any Senator acting *ex officio* or as a representative of the Senate must get directions from the Senate. By constitutional design, he or she cannot get instructions from the House of Representatives. If a Senator represents the Congress rather than simply the Senate, then he or she must be open to amend or modify the instructions given to him or her by the Senate if the House of Representatives' instructions are different. Yet, the Constitution vests disciplinary power only on the Senate for any Senator.

The same argument applies to a Member of the House of Representatives.

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[9] CONSTITUTION, Art. VI, Sec. 16 (4), par. (2).

[10] CONSTITUTION, Art. VI, Sec. 16 (3).

No Senator may carry instructions from the House of Representatives. No Member of the House of Representatives may carry instructions from the Senate. Neither Senator nor Member of the House of Representatives may therefore represent Congress as a whole.

The difference between the Senate and the House of Representative was a subject of discussion in the Constitutional Commission. In the July 21, 1986 Records of the Constitutional Commission, Commissioner Jose F. S. Bengzon presented the following argument during the discussion on bicameralism, on the distinction between Congressmen and Senators, and the role of the Filipino people in making these officials accountable:

> I grant the proposition that the Members of the House of Representatives are closer to the people that they represent. I grant the proposition that the Members of the House of Representatives campaign on a one-to-one basis with the people in the barrios and their constituencies. I also grant the proposition that the candidates for Senator do not have as much time to mingle around with their constituencies in their respective home bases as the candidates for the House. I also grant the proposition that the candidates for the Senate go around the country in their efforts to win the votes of all the members of the electorate at a lesser time than that given to the candidates for the House of Representatives. But then the lesson of the last 14 years has made us mature in our political thinking and has given us political will and self-determination. We really cannot disassociate the fact that the Congressman, the Member of the House of Representatives, no matter how national he would like to think, is very much strongly drawn into the problems of his local constituents in his own district.
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> Due to the maturity of the Filipinos for the last 14 years and because of the emergence of people power, I believe that this so-called people power can be used to monitor not only the Members of the House of Representatives but also the Members of the Senate. As I said we may have probably adopted the American formula in the beginning but over these years, I think we have developed that kind of a system and adopted it to our own needs. So at this point in time, with people power working, it is not only the Members of the House who can be subjected to people power but also the Members of the Senate because they can also be picketed and criticized through written articles and

talk shows. And even the people not only from their constituencies in their respective regions and districts but from the whole country can exercise people power against the Members of the Senate because they are supposed to represent the entire country. So while the Members of Congress become unconsciously parochial in their desire to help their constituencies, the Members of the Senate are there to take a look at all of these parochial proposals and coordinate them with the national problems. They may be detached in that sense but they are not detached from the people because they themselves know and realize that they owe their position not only to the people from their respective provinces but also to the people from the whole country. So, I say that people power now will be able to monitor the activities of the Members of the House of Representatives and that very same people power can be also used to monitor the activities of the Members of the Senate.[11]

Commissioner Bengzon provided an illustration of the fundamental distinction between the House of Representatives and the Senate, particularly regarding their respective constituencies and electorate. These differences, however, only illustrate that the work of the Senate and the House of Representatives taken together results in a Congress functioning as one branch of government. Article VI, Section 1, as approved by the Commission, spoke of one Congress whose powers are vested in both the House of Representatives and the Senate.

Thus, when the Constitution provides that a "representative of Congress" should participate in the Judicial and Bar Council, it cannot mean a Senator carrying out the instructions of the House or a Member of the House of Representative carrying out instructions from the Senate. It is not the kind of a single Congress contemplated by our Constitution. The opinion therefore that a Senator or a Member of the House of Representative may represent the Congress as a whole is contrary to the intent of the Constitution. It is unworkable.

One mechanism used in the past to work out the consequence of the majority's opinion is to allow a Senator and a Member

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[11] II RECORD, CONSTITUTIONAL COMMISSION 63 (July 21, 1986).

of the House of Representative to sit in the Judicial and Bar Council but to each allow them only half a vote.

Within the Judicial and Bar Council, the Chief Justice is entitled to one vote. The Secretary of Justice is also entitled to one whole vote and so are the Integrated Bar of the Philippines, the private sector, legal academia, and retired justices. Each of these sectors are given equal importance and rewarded with one whole vote. However, in this view, the Senate is only worth fifty percent of the wisdom of these sectors. Likewise, the wisdom of the House of Representatives is only worth fifty percent of these institutions.

This is constitutionally abominable. It is inconceivable that our people, in ratifying the Constitution granting awesome powers to Congress, intended to diminish its component parts. After all, they are institutions composed of people who have submitted themselves to the electorate. In creating shortlists of possible candidates to the judiciary, we can safely suppose that their input is not less than the input of the professor of law or the member of the Integrated Bar of the Philippines or the member from the private sector.

The other solution done in the past was to alternate the seat between a Senator and a Member of the House of Representatives.

To alternate the seat given to Congress between the Senate and the House of Representatives would mean not giving a seat to the Congress at all. Again, when a Senator is seated, he or she represents the Senate and not Congress as a whole. When a Member of the House of Representative is seated, he or she can only represent Congress as a whole. Thus, alternating the seat not only diminishes congressional representation; it negates it.

Constitutional Interpretation

The argument that swayed the majority in this case's original decision was that if those who crafted our Constitution intended that there be two representatives from Congress, it would not have used the preposition "a" in Article VIII, Section 8 (1). However, beyond the number of representatives, the Constitution

intends that in the Judicial and Bar Council, there will be representation from Congress and that it will be "*ex officio*", *i.e.*, by virtue of their positions or offices. We note that the provision did not provide for a number of members to the Judicial and Bar Council. This is unlike the provisions creating many other bodies in the Constitution.[12]

[12] CONSTITUTION, Art. VI, Sec. 2: The Senate shall be composed of twenty-four Senators who shall be elected at large by the qualified voters of the Philippines, as may be provided by law.;

Art. VI, Sec. 5: The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law...;

Art. VI, Sec. 17: The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be…;

Art. VI, Sec. 18: There shall be a Commission on Appointments consisting of the President of the Senate, as *ex officio* Chairman, twelve Senators, and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein.;

Art. VIII, Sec. 4.1: The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in its discretion, in division of three, five, or seven Members...;

Art. IX (B), Sec. 1: The civil service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners...;

Art. IX (C), Sec. 1: There shall be a Commission on Elections composed of a Chairman and six Commissioners...;

Art. IX (D), Sec. 1: There shall be a Commission on Audit composed of a Chairman and two Commissioners...;

Art. XI, Sec. 11: There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.;

Art. XII, Sec. 17 (2): The Commission [on Human Rights] shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar.

In other words, we could privilege or start our interpretation only from the preposition "a" and from there provide a meaning that ensures a difficult and unworkable result — one which undermines the concept of a bicameral congress implied in all the other 114 other places in the Constitution that uses the word "Congress".

Or, we could give the provision a reasonable interpretation that is within the expectations of the people who ratified the Constitution by also seeing and reading the words "representative of Congress" and "*ex officio*."

This proposed interpretation does not violate the basic tenet regarding the authoritativeness of the text of the Constitution. It does not detract from the text. It follows the canonical requirement of *verba legis*. But in doing so, we encounter an ambiguity.

In *Macalintal v. Presidential Electoral Tribunal*,[13] we said:

> As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, its language as much as possible should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus these are cases where the need for construction is reduced to a minimum.
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> However, where there is ambiguity or doubt, the words of the Constitution should be interpreted in accordance with the intent of its framers or ratio *legis et anima*. A doubtful provision must be examined in light of the history of the times, and the condition and circumstances surrounding the framing of the Constitution. In following this guideline, courts should bear in mind the object sought to be accomplished in adopting a doubtful constitutional provision, and the evils sought to be prevented or remedied. Consequently, the intent of the framers and the people ratifying the constitution, and not the panderings of self-indulgent men, should be given effect.

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[13] *Atty. Romulo A. Macalintal v. Presidential Electoral Tribunal*, G.R. No. 191618, November 23, 2010, 635 SCRA 783, 797-799.

Last, *ut magis valeat quam pereat* – the Constitution is to be interpreted as a whole. We intoned thus in the landmark case of *Civil Liberties Union v. Executive Secretary*:

> It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.

In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory. (Emphasis provided)

And in *Civil Liberties Union v. Executive Secretary*,[14] we said:

A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.

The authoritativeness of text is no excuse to provide an unworkable result or one which undermines the intended structure of government provided in the Constitution. Text is authoritative, but it is not exhaustive of the entire universe of meaning.

[14] *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1981, 194 SCRA 317, 325.

There is no compelling reason why we should blind ourselves as to the meaning of "representative of Congress" and "*ex officio*." There is no compelling reason why there should only be one representative of a bicameral Congress.

Proposed Reasons for Only One Representative of Congress

The first reason to support the need for only one representative of Congress is the belief that there needs to be an odd number in the Judicial and Bar Council.

This is true only if the decision of the constitutional organ in question is a dichotomous one, *i.e.*, a yes or a no. It is in this sense that a tie-breaker will be necessary.

However, the Judicial and Bar Council is not that sort of a constitutional organ. Its duty is to provide the President with a shortlist of candidates to every judicial position. We take judicial notice that for vacancies, each member of the Judicial and Bar Council is asked to list at least three (3) names. All these votes are tallied and those who garner a specific plurality are thus put on the list and transmitted to the President. There had been no occasion when the Judicial and Bar Council ever needed to break a tie. The Judicial and Bar Council's functions proceed regardless of whether they have seven or eight members.

The second reason that the main opinion accepted as persuasive was the opinion that Congress does not discharge its function to check and balance the power of both the Judiciary and the Executive in the Judicial and Bar Council. From this premise, it then proceeds to argue that the Representative of Congress, who is *ex officio*, does not need to consult with Congress as a whole.

This is very perplexing and difficult to accept.

By virtue of the fundamental premise of separation of powers, the appointing power in the judiciary should be done by the Supreme Court. However, for judicial positions, this is vested in the Executive. Furthermore, because of the importance of these appointments, the President's discretion is limited to a

shortlist submitted to him by the Judicial and Bar Council which is under the supervision of the Supreme Court but composed of several components.

The Judicial and Bar Council represents the constituents affected by judicial appointments and by extension, judicial decisions. It provides for those who have some function *vis a vis* the law that should be applied and interpreted by our courts. Hence, represented are practicing lawyers (Integrated Bar of the Philippines), prosecutors (Secretary of the Department of Justice), legal academia (professor of law), and judges or justices (retired justice and the Chief Justice). Also represented in some way are those that will be affected by the interpretation directly (private sector representative).

Congress is represented for many reasons.

One, it crafts statutes and to that extent may want to ensure that those who are appointed to the judiciary are familiar with these statutes and will have the competence, integrity, and independence to read its meaning.

Two, the power of judicial review vests our courts with the ability to nullify their acts. Congress, therefore, has an interest in the judicial philosophy of those considered for appointment into our judiciary.

Three, Congress is a political organ. As such, it is familiar with the biases of our political leaders including that of the President. Thus, it will have greater sensitivity to the necessity for political accommodations if there be any. Keeping in mind the independence required of our judges and justices, the Members of Congress may be able to appreciate the kind of balance that will be necessary — the same balance that the President might be able to likewise appreciate — when putting a person in the shortlist of judicial candidates. Not only do they appreciate this balance, they embody it. Senators and Members of the House of Representatives (unlike any of the other members of the Judicial and Bar Council), periodically submit themselves to the electorate.

It is for these reasons that the Congressional representatives in the Judicial and Bar Council may be instructed by their respective chambers to consider some principles and directions. Through resolutions or actions by the Congressional Committees they represent, the JBC Congressional representatives' choices may be constrained. Therefore, they do not sit there just to represent themselves. Again, they are "representatives of Congress" "*ex officio.*"

The third reason to support only one representative of Congress is the belief that there is the "unmistakable tenor" in the provision in question that one co-equal branch should be represented only by one Representative.[15] It may be true that the Secretary of Justice is the political alter ego of the President or the Executive. However, Congress as a whole does not have a political alter ego. In other words, while the Executive may be represented by a single individual, Congress cannot be represented by an individual. Congress, as stated earlier, operates through the Senate and the House of Representatives. Unlike the Executive, the Legislative branch cannot be represented by only one individual.

A Note on the Work of the Constitutional Commission

Time and again, we have clarified the interpretative value to Us of the deliberations of the Constitutional Commission. Thus in *Civil Liberties Union v. Executive Secretary,* we emphasized:

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention 'are of value as showing the views of the individual members, and as indicating the reason for their votes, but they give Us no light as to the views of

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[15] *Francisco I. Chavez v. Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Neil C. Tupas, Jr.*, G.R. No. 202242, July 17, 2012, p. 18.

the large majority who did not talk, much less of the mass or our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face.' ***The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof***.[16] (Emphasis provided)

Also worth Our recall is the celebrated comment of Charles P. Curtis, Jr. on the role of history in constitutional exegesis:[17]

The intention of the framers of the Constitution, even assuming we could discover what it was, when it is not adequately expressed in the Constitution, that is to say, what they meant when they did not say it, surely that has no binding force upon us. ***If we look behind or beyond what they set down in the document, prying into what else they wrote and what they said, anything we may find is only advisory. They may sit in at our councils. There is no reason why we should eavesdrop on theirs.***[18] (Emphasis provided)

In addition to the interpretative value of the discussion in the Constitutional Commission, we should always be careful when we quote from their records without understanding their context.

The Committees of the Constitutional Commission were all tasked to finish their reports not later than July 7, 1986.[19] The Second and Third Readings were scheduled to finish not later than August 15, 1986.[20] The members of the Sponsorship and Style Committee were tasked to finish their work of formulating and polishing the style of the final draft of the new Constitution

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[16] *Civil Liberties Union v. Executive Secretary, supra* at 337.

[17] Charles P. Curtis, *LIONS UNDER THE THRONE 2*, Houghton Mifflin, 1947.

[18] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, 412 Phil. 308, 363 (2001).

[19] I RECORD, CONSTITUTIONAL COMMISSION Appendix 2, p. 1900, (July 10, 1986), PROPOSED RESOLUTION NO. 50, RESOLUTION PROVIDING FOR THE RULES OF THE CONSTITUTIONAL COMMISSION (PROPOSED RESOLUTION NO. 50), Rule II, Sec. 9.

[20] Proposed Resolution No. 50, Rule II, Sec. 9.

scheduled for submission to the entire membership of the Commission not later than August 25, 1986.[21]

The Rules of the Constitutional Commission also provided for a process of approving resolutions and amendments.

Constitutional proposals were embodied in resolutions signed by the author.[22] If they emanated from a committee, the resolution was signed by its chairman.[23] Resolutions were filed with the Secretary-General.[24] The First Reading took place when the titles of the resolutions were read and referred to the appropriate committee.[25]

The Committees then submitted a Report on each resolution.[26] The Steering Committee took charge of including the committee report in the Calendar for Second Reading.[27] The Second Reading took place on the day set for the consideration of a resolution.[28] The provisions were read in full with the amendments proposed by the committee, if there were any.[29]

A motion to close debate took place after three speeches for and two against, or if only one speech has been raised and none against it.[30] The President of the Constitutional Commission had the prerogative to allow debates among those who had indicated that they intended to be heard on certain matters.[31]

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[21] Proposed Resolution No. 50, Rule II, Sec. 9.

[22] Proposed Resolution No. 50, Rule IV, Sec. 20.

[23] Proposed Resolution No. 50, Rule IV, Sec. 20.

[24] Proposed Resolution No. 50, Rule IV, Sec. 20.

[25] Proposed Resolution No. 50, Rule IV, Sec. 21.

[26] Proposed Resolution No. 50, Rule IV, Sec. 22.

[27] Proposed Resolution No. 50, Rule IV, Sec. 22.

[28] Proposed Resolution No. 50, Rule IV, Sec. 23.

[29] Proposed Resolution No. 50, Rule IV, Sec. 23.

[30] Proposed Resolution No. 50, Rule IV, Sec. 24.

[31] Proposed Resolution No. 50, Rule IV, Sec. 25.

After the close of the debate, the Constitutional Commission proceeded to consider the Committee amendments.[32]

After a resolution was approved on Second Reading, it was included in the Calendar for Third Reading.[33] Neither further debate nor amendment shall be made on the resolution on its Third Reading.[34] All constitutional proposals approved by the Commission after Third Reading were referred to the Committees on Sponsorship and Style for collation, organization, and consolidation into a complete and final draft of the Constitution.[35] The final draft was submitted to the Commission for the sole purpose of determining whether it reflects faithfully and accurately the proposals as approved on Second Reading.[36]

With respect to the provision which is now Article VIII, Section 8 (1), the timetable was as follows:

On July 10, 1986, the Committee on the Judiciary presented its Report to the Commission.[37] Deliberations then took place on the same day; on July 11, 1986; and on July 14, 1986. It was on July 10 that Commissioner Rodrigo raised points regarding the Judicial and Bar Council.[38] The discussion spoke of the Judicial and Bar Council having seven members.

Numerous mentions of the Judicial and Bar Council being comprised of seven members were also made by Commissioners on July 14, 1986. On the same day, the amended article was approved by unanimous voting.[39]

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[32] Proposed Resolution No. 50, Rule IV, Sec. 26.

[33] Proposed Resolution No. 50, Rule IV, Sec. 27.

[34] Proposed Resolution No. 50, Rule IV, Sec. 27.

[35] Proposed Resolution No. 50, Rule IV, Sec. 29.

[36] Proposed Resolution No. 50, Rule IV, Sec. 29.

[37] I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 27 (Thursday, July 10, 1986).

[38] I RECORD, CONSTITUTIONAL COMMISSION, RECORD NO. 27 (Thursday, July 10, 1986).

[39] I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 27 (Thursday, July 10, 1986).

On July 19, 1986, the vote on Third Reading on the Article on the Judiciary took place.[40] The vote was 43 and none against.[41]

Committee Report No. 22 proposing an article on a National Assembly was reported out by July 21, 1986.[42] It provided for a unicameral assembly. Commissioner Hilario Davide, Jr., made the presentation and stated that they had a very difficult decision to make regarding bicameralism and unicameralism.[43] The debate occupied the Commission for the whole day.

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[40] I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 34 (Saturday, July 19, 1986).

[41] I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 34 (Saturday, July 19, 1986).

[42] I RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 34 (Saturday, July 19, 1986), which reads:

RECONSIDERATION AND APPROVAL, ON THIRD READING, OF THE ARTICLE ON THE JUDICIARY. On motion of Mr. Bengzon, there being no objection, the Body reconsidered the approval, on Third Reading, of the Article on the Judiciary, to afford the other Members opportunity to cast their votes. Thereupon, upon direction of the Chair, the Secretary-General called the Roll for nominal voting and the following Members cast an affirmative vote:

Abubakar

Alonto

Azcuna

Natividad

Tadeo

With 5 additional affirmative votes, making a total of 43 Members voting in favor and none against, the Chair declared the Article on the Judiciary approved on Third Reading.

[43] I RECORD, CONSTITUTIONAL COMMISSION, NO. 35 (Monday, July 21, 1986), which reads in part:

MR. DAVIDE:

x x x x x x x x x

A Unicameral Structure of the National Assembly. — In the records of the 1935 and 1971 Constitutional Conventions, and now the 1986 Constitutional Commission, advocates of unicameralism and bicameralism have eloquently discoursed on the matter. The draft proposal of the 1986 UP Law Constitution Project analyzes exhaustively the best features and the disadvantages of each. Our people, having experienced both systems, are faced with a difficult decision to make.

Then, a vote on the structure of Congress took place.[44] Forty four (44) commissioners cast their votes during the roll call.[45] The vote was 23 to 22.[46]

On October 8, 1986, the Article on the Judiciary was reopened for purposes of introducing amendments to the proposed Sections 3, 7, 10, 11, 13, and 14.[47]

On October 9, 1986, the entire Article on the Legislature was approved on Third Reading.[48]

Madam President and my dear colleagues, even in our own Committee, I had to break the tie in favor of unicameralism. Commissioner Sarmiento, in his Resolution No. 396, aptly stated that the Philippines needs a unicameral legislative assembly which is truly representative of the people, responsive to their needs and welfare, economical to maintain and efficient and effective in the exercise of its powers, functions and duties in the discharge of its responsibilities. Commissioner Tingson, however, said that despite its simplicity of organization, resulting in economy and efficiency, and achieving a closer relationship between the legislative and executive, it also resulted in the authoritarian manipulation by the Chief Executive, depriving in the process the people from expressing their true sentiments through their chosen representatives. Thus, under Resolution No. 321, Commissioner Tingson calls for the restoration of the bicameral form of legislature to maximize the participation of people in decision-making.

[44] I, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 35, (Monday July 21, 1986).

[45] I, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 35, (Monday July 21, 1986), which reads in part:

x x x x x x x x x

With 22 Members voting for a unicameral system and 23 Members voting for bicameralism, the Body approved the proposal for a bicameral legislature.

[46] Bernas, Joaquin, *THE INTENT OF THE 1986 CONSTITUTION WRITERS*, 1995, pp. 310-311.

[47] III, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 102 (Tuesday and Wednesday, October 7 and 8, 1987).

[48] III, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 103 (Thursday, October 9, 1986), which reads in part:

x x x x x x x x x

With 29 Members voting in favor, none against and 7 abstentions, the Body approved, on Third Reading, the Article on the Legislative.

By October 10, 1986, changes in style on the Article on the Legislature were introduced.[49]

On October 15, 1986, Commissioner Guingona presented the 1986 Constitution to the President of the Constitutional Commission, Cecilia Munoz-Palma.[50]

It is apparent that the Constitutional Commission either through the Style and Sponsorship Committee or the Committees on the Legislature and the Judiciary was not able to amend the provision concerning the Judicial and Bar Council after the Commission had decided to propose a bicameral Congress. We can take judicial notice of the chronology of events during the deliberations of the Constitutional Commission. The chronology should be taken as much as the substance of discussions exchanged between the Commissioners.

The quotations from the Commissioners mentioned in the main opinion and in the proposed resolution of the present Motion for Reconsideration should thus be appreciated in its proper context.

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[49] III, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 104 (Friday, October 10, 1986).

[50] V, RECORD, CONSTITUTIONAL COMMISSION, JOURNAL NO. 109 (Wednesday, October 15, 1986), which reads in part:

x x x x x x x x x

MR. GUINGONA: Madam President, I have the honor on behalf of the Sponsorship Committee to officially announce that on October 12, the 1986 Constitutional Commission had completed under the able, firm and dedicated leadership of our President, the Honorable Cecilia Muñoz Palma, the task of drafting a Constitution for our people, a Constitution reflective of the spirit of the time — a spirit of nationalism, a spirit of dedication to the democratic way of life, a spirit of liberation and rising expectations, a spirit of confidence in the Filipino. On that day, Madam President, the Members of this Constitutional Commission had approved on Third Reading the draft Constitution of the Republic of the Philippines — a practical instrument suited to the circumstances of our time but which is broad enough to allow future generations to respond to challenges which we of this generation could not foretell, a Charter which would seek to establish in this fair land a community characterized by social progress, political stability, economic prosperity, peace, justice and freedom for all...

The interpellation involving Commissioners Rodrigo and Concepcion took place on July 10, 1986 and on July 14, 1986.[51] These discussions were about Committee Report No. 18 on the Judiciary. Thus:

MR. RODRIGO: Let me go to another point then.

On page 2, Section 5, there is a novel provision about appointments of members of the Supreme Court and of judges of lower courts. At present it is the President who appoints them. If there is a Commission on Appointments, then it is the President with the confirmation of the Commission on Appointments. In this proposal, we would like to establish a new office, a sort of a board composed of seven members, called the Judicial and Bar Council. And while the President will still appoint the members of the judiciary, he will be limited to the recommendees of this Council.

x x x x x x x x x

MR. RODRIGO: Of the seven members of the Judicial and Bar Council, the President appoints four of them who are the regular members.

x x x x x x x x x

MR. CONCEPCION: The only purpose of the Committee is to eliminate partisan politics.[52]

x x x x x x x x x

It must also be noted that during the same day and in the same discussion, both Commissioners Rodrigo and Concepcion later on referred to a 'National Assembly' and not a 'Congress,' as can be seen here:

MR. RODRIGO: Another point. Under our present Constitution, the National Assembly may enact rules of court, is that right? On page 4, the proviso on lines 17 to 19 of the Article on the Judiciary provides:

The National Assembly may repeal, alter, or supplement the said rules with the advice and concurrence of the Supreme Court.

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[51] I RECORD, CONSTITUTIONAL COMMISSION 445 (July 10, 1986) and I RECORD, CONSTITUTIONAL COMMISSION 486-487 (July 14, 1986).

[52] I RECORD, CONSTITUTIONAL COMMISSION 445 (July 10, 1986).

MR. CONCEPCION: Yes.

MR. RODRIGO: So, two things are required of the National Assembly before it can repeal, alter or supplement the rules concerning the protection and enforcement of constitutional rights, pleading, *etc*. — it must have the advice and concurrence of the Supreme Court.

MR. CONCEPCION: That is correct.[53]

On July 14, 1986, the Commission proceeded with the Period of Amendments. This was when the exchange noted in the main opinion took place. Thus:

MR. RODRIGO: If my amendment is approved, then the provision will be exactly the same as the provision in the 1935 Constitution, Article VIII, Section 5.

x x x x x x x x x

If we do not remove the proposed amendment on the creation of the Judicial and Bar Council, this will be a diminution of the appointing power of the highest magistrate of the land, of the President of the Philippines elected by all the Filipino people. The appointing power will be limited by a group of seven people who are not elected by the people but only appointed.

Mr. Presiding Officer, if this Council is created, there will be no uniformity in our constitutional provisions on appointments. The members of the Judiciary will be segregated from the rest of the government. Even a municipal judge cannot be appointed by the President except upon recommendation or nomination of three names by this committee of seven people, commissioners of the Commission on Elections, the COA and Commission on Civil Service x x x even ambassadors, generals of the Army will not come under this restriction. Why are we going to segregate the Judiciary from the rest of our government in the appointment of the high-ranking officials?

Another reason is that this Council will be ineffective. It will just besmirch the honor of our President without being effective at all because this Council will be under the influence of the President. Four out of seven are appointees of the President, and they can be reappointed when their term ends. Therefore, they would kowtow to

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[53] I RECORD, CONSTITUTIONAL COMMISSION 445 (July 10, 1986).

the President. A fifth member is the Minister of Justice, an alter ego of the President. Another member represents the legislature. In all probability, the controlling party in the legislature belongs to the President and, therefore, this representative from the National Assembly is also under the influence of the President. And may I say, Mr. Presiding Officer, that even the Chief Justice of the Supreme Court is an appointee of the President. So, it is futile; he will be influenced anyway by the President.[54]

It must again be noted that during this day and period of amendments after the quoted passage in the Decision, the Commission later on made use of the term 'National Assembly' and not 'Congress' again:

MR. MAAMBONG: Presiding Officer and members of the Committee, I propose to delete the last sentence on Section 16, lines 28 to 30 which reads: "The Chief Justice shall address the National Assembly at the opening of each regular session."

May I explain that I have gone over the operations of other deliberative assemblies in some parts of the world, and I noticed that it is only the Chief Executive or head of state who addresses the National Assembly at its opening. When we say "opening," we are referring to the first convening of any national assembly. Hence, when the Chief Executive or head of state addresses the National Assembly on that occasion, no other speaker is allowed to address the body.

So I move for the deletion of this last sentence.[55]

Based on the chronology of events, the discussions cited by the main *ponencia* took place when the commissioners were still contemplating a unicameral legislature in the course of this discussion. Necessarily, only one Representative would be needed to fully effect the participation of a unicameral legislature. Therefore, any mention of the composition of the JBC having seven members in the records of the Constitutional Commission, particularly during the dates cited, was obviously within the context that the Commission had not yet voted and agreed upon a bicameral legislature.

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[54] I RECORD, CONSTITUTIONAL COMMISSION 486-487 (July 14, 1986).

[55] I RECORD, CONSTITUTIONAL COMMISSION 510 (July 14, 1986).

The composition of the Congress as a bilateral legislature became final only after the JBC discussions as a seven-member Council indicated in the Records of the Constitutional Commission took place. This puts into the proper context the recognition by Commissioner Christian Monsod on July 30, 1986, which runs as follows:

> Last week, we voted for a bicameral legislature. Perhaps it is symptomatic of what the thinking of this group is, that all the provisions that were being drafted up to that time assumed a unicameral government.[56]

The repeated mentions of the JBC having seven members as indicated in the Records of the Constitutional Commission do not justify the points raised by petitioner. This is a situation where the records of the Constitutional Commission do not serve even as persuasive means to ascertain intent at least in so far as the intended numbers for the Judicial and Bar Council. Certainly they are not relevant even to advise us on how Congress is to be represented in that constitutional organ.

We should never forget that when we interpret the Constitution, we do so with full appreciation of every part of the text within an entire document understood by the people as they ratified it and with all its contemporary consequences. As an eminent author in constitutional theory has observed while going through the various interpretative modes presented in jurisprudence: "x x x all of the methodologies that will be discussed, properly understood, figure in constitutional analysis as opportunities: as starting points, constituent parts of complex arguments, or concluding evocations." [57]

Discerning that there should be a Senator and a Member of the House of Representatives that sit in the Judicial and Bar Council so that Congress can be fully represented *ex officio* is not judicial activism. It is in keeping with the constitutional

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[56] II RECORD, CONSTITUTIONAL COMMISSION 434 (July 30, 1986).

[57] Lawrence Tribe, as cited in *It is a Constitution We Are Expounding*, p. 21 (2009), previously published in AMERICAN CONSTITUTIONAL LAW, *Chapter 1: Approaches to Constitutional Analysis* (3rd ed.2000).

project of a bicameral Congress that is effective whenever and wherever it is represented. It is in tune with how our people understand Congress as described in the fundamental law. It is consistent with our duty to read the authoritative text of the Constitution so that ordinary people who seek to understand this most basic law through Our decisions would understand that beyond a single isolated text — even beyond a preposition in Article VIII, Section 8 (1), our primordial values and principles are framed, congealed and will be given full effect.

In a sense, we do not just read words in a legal document; we give meaning to a Constitution.

For these reasons, I vote to grant the Motion for Reconsideration and deny the Petition for lack of merit.

EN BANC

[G.R. No. 203646. April 16, 2013]

SAMSON S. ALCANTARA, ROMEO R. ROBISO, PEDRO T. DABU, JR., LOPE E. FEBLE, NOEL T. TIAMPONG and JOSE FLORO CRISOLOGO, *petitioners, vs.* **COMMISSION ON ELECTIONS, JONATHAN DE LA CRUZ, ED VINCENT ALBANO and BENEDICT KATO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS (COMELEC); HAS JURISDICTION TO RESOLVE PARTY LEADERSHIP DISPUTES.— Under the Constitution, the COMELEC is empowered to register political parties. More specifically, as part of its power to enforce and administer laws relative to the conduct of an election, the

COMELEC possesses the power to register national, regional, and sectoral parties or organizations or coalitions for purposes of the party-list system of elections. It is the party-list group's registration under the party-list system that confers juridical personality on the party-list group for election related purposes. As a juridical entity, a party-list group can only validly act through its duly authorized representative/s. In the exercise of its power to register parties, the COMELEC necessarily possesses the power to pass upon the question of who, among the legitimate officers of the party-list group, are entitled to exercise the rights and privileges granted to a party-list group under the law. The COMELEC's jurisdiction on this point is well settled and is not here disputed.

2. ID.; ID.; ID.; ID.; THE COURT MAY INTERFERE WITH THE COMELEC'S ACTION ONLY IF IT ACTED WITH GRAVE ABUSE OF DISCRETION; GRAVE ABUSE OF DISCRETION, NOT ESTABLISHED.— With clear jurisdictional authority to resolve the issue of party leadership and party identity, this Court will only be justified in interfering with the COMELEC's action under Rules 64 and 65 of the Rules of Court if the petitioners can establish that the COMELEC acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. By grave abuse of discretion is generally meant the capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. Such abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. The petitioners failed to hurdle this barrier.

3. ID.; ELECTIONS; SECTORAL PARTY; GENERAL PRINCIPLES APPLICABLE TO POLITICAL PARTIES AS A VOLUNTARY ASSOCIATION ALSO APPLY TO A SECTORAL PARTY.— While ABAKADA is registered as a sectoral party, the general principles applicable to political parties as a voluntary association apply to it. Political parties constitute a basic element of our democratic institutional apparatus. Among others, political parties help stimulate public participation in the political arena and translate the results of this participation into meaningful policies and programs of government offered to the electorate.

Once in government, they are able to significantly contribute in forging linkages between the government and the society by adjusting these policies with the varying and often conflicting interests of the different segments of society. Should they belong to the minority, they also provide a check to counterbalance those who are in power. For these reasons, particularly, for the role they play in the general political process, political parties are generally free to conduct its internal affairs pursuant to its constitutionally-protected right to free association. This includes the determination of the individuals who shall constitute the association and the officials who shall lead the party in attaining its goals. The political parties, through their members, are free to adopt their own constitution and by-laws that contain the terms governing the group in pursuing its goals. These terms, include the terms in choosing its leaders and members, among others. To the group belongs the power to adopt a constitution; to them likewise belongs the power to amend, modify or altogether scrap it.

4. ID.; ID.; ID.; VALID REASONS EXIST TO OUST A SECTORAL PARTY PRESIDENT.— As the COMELEC correctly observed, ABAKADA's constitution expressly requires the convening of the Supreme Assembly once every three years for purposes of (i) electing the members of the National Executive Board - the governing body of ABAKADA - headed by petitioner Alcantara as President. In contravention of ABAKADA's own constitution, no Supreme Assembly was ever held since ABAKADA came into existence in 2003, prompting the respondents to communicate with petitioner Alcantara to urge him "to call for and assemble the leaders, as well as members of the party, for the coming May 2010 elections." This call, to our mind, is far from unreasonable and was in fact a practical approach to a coming political exercise. Unfortunately, all the respondents' communications appear to have fallen on deaf ears. Instead, the petitioners chose to cling to legal technicalities under the party's constitution over the provisions of the same constitution that promotes democratic accountability within the party. As the COMELEC did, the Court cannot certainly give primacy to matters of procedure over substance in ABAKADA's CBL especially after the general membership has spoken. The COMELEC, in the exercise of its jurisdiction to resolve party leadership disputes, has rendered its ruling. By failing to

establish grave abuse of discretion on the part of the COMELEC, this Court can do no less than dismiss this petition and allow ABAKADA as a sectoral party to determine its own affairs under its present leadership.

APPEARANCES OF COUNSEL

Pedro T. Dabu, Jr. and *Lope E. Feble* for petitioners.
The Solicitor General for public respondent.
Legaspi Legaspi & Associates Law Offices for private respondents.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for *certiorari* under Rule 64 in relation with Rule 65 assailing the May 4, 2010[1] and September 5, 2012 resolutions of the Commission on Elections (*COMELEC*). The assailed rulings (i) dismissed the petition filed by Samson S. Alcantara, Romeo R. Robiso, Pedro T. Dabu, Jr., Lope E. Feble, Noel T. Tiampong and Jose Floro Crisologo (collectively, *petitioners*) for the declaration of nullity of the *Supreme Assembly* held on February 6, 2010 and (ii) denied the motion for reconsideration the petitioners subsequently filed.

The petitioners are officials and members of *Abakada Guro* Partylist (*ABAKADA*): Attys. Alcantara, Tiampong and Dabu (*Alcantara, et al.*) are the founding President, Vice President for the Visayas and Secretary, respectively, of *Abakada*; while Robiso, Feble and Crisologo have been members of the party since 2007.[2]

ANTECEDENT FACTS

Sometime between January and April **2003**, Alcantara, *et al.*, along with their fellow law teachers, organized a party named *Advocates and Adherents of Social Justice for School*

[1] *Rollo*, p. 32.

[2] *Id.* at 4.

Teachers and Allied Workers. The party has a constitution and by-laws (*CBL*) and a principal office at the same location as Atty. Alcantara's law office.[3]

On May 14, 2004, the party name was amended and changed to *Abakada Guro Party list*. The change was duly approved by the COMELEC. In the May 2007 elections, where ABAKADA participated and won a seat, Jonathan de la Cruz (*De la Cruz*), its first nominee, became the party's sole representative in Congress.[4]

In a May 5, 2009 letter separately addressed to the COMELEC and the Speaker of the House of Representatives, De la Cruz tendered his "irrevocable" resignation effective December 31, 2009.[5] Despite the supposed effectivity of his resignation however, De la Cruz refused to vacate his seat, prompting Alcantara, *et al.* to file a petition for *quo warranto* with the Supreme Court. This petition was subsequently dismissed for being moot and academic.[6]

In several occasions between October and December 2009, De la Cruz requested Alcantara in writing to convene the Supreme Assembly. He informed Alcantara, too, of the nationwide party caucuses being held and of the common sentiment among members that a party meeting should be called. Under ABAKADA's CBL, a Supreme Assembly meeting should be held at least once every three years; since 2004, no Supreme Assembly had been called and held.

In his letter-response, Alcantara explained that the Supreme Assembly cannot be held as requested because many of the members reside in the provinces; the party lacked the funds to cover the necessary expenses. Instead, Alcantara replied that

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

[4] *Id.* at 6.

[5] *Id.* at 68-69.

[6] G.R. No. 191583, April 17, 2012, *Abakada Guro Party List and Samson S. Alcantara, Noel T. Tiampong, Pedro T. Dabu, Jr., Rodolfo Mapile, Romeo R. Robiso v. Jonathan A. De la Cruz and Speaker Prospero C. Nograles*.

it would be more "feasible to hold the [Supreme Assembly] early next year, as may be determined by the [National Executive Board]."[7] Alcantara added:

> 1. Approval of applications for membership in Abakada is a party matter, and genuine devotion to the advancement of the welfare of the teachers and other school personnel is a basic qualification for membership as prescribed in our [CBL].
>
> 2. Membership identification cards have to be signed by the Secretary… and the President of ABAKADA.
>
> xxx
>
> Incidentally, we have filed with the Comelec our Manifestation to Participate on November 24, 2009.[8]

On December 15, 2009, an All Leaders Assembly was convened. While Alcantara failed to attend the meeting, he sent Noel Tiampong in his stead. The convening of a Supreme Assembly was proposed at the meeting, with the agenda of amending the ABAKADA CBL, the election of new officers, and the discussion of other election related matters. The proposal was to hold the meeting sometime in February 2010.

Accordingly, in a letter dated January 23, 2010, Ed Vincent Albano (*Albano*), acting as the party's Secretary, notified the party's chapters and members that the party would hold its first *Supreme Assembly* on February 6, 2010 "pursuant to the resolution adopted by the party during its First All Leaders Assembly held last December 15, 2009."[9] As scheduled, the respondents proceeded to hold a *Supreme Assembly* that resulted in the approval and ratification of the revised ABAKADA CBL; the ouster of Alcantara *et. al* from their positions; the expulsion of the petitioners from the party; and the election of De la Cruz and Albano as new President and Secretary-General, respectively.

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[7] *Rollo*, p. 71.

[8] *Id.*

[9] *Id.* at 79.

This prompted the petitioners to file a petition with the COMELEC to (i) declare the meeting held on February 6, 2010 void and (ii) restrain the respondents from falsely representing themselves as the duly elected officers of ABAKADA.

In their petition, the petitioners alleged that the sending of notices and the holding of a Supreme Assembly were contrary to the party's CBL for not having been authorized by the President and by the party's National Executive Board. They alleged that Albano has no authority to sign and send notices, much less call a Supreme Assembly, since he is not the party's Secretary. Likewise, the membership status of several meeting participants have neither been approved nor accepted in accordance with the party's CBL.

The respondents defended the validity of the meeting in their comment to the petition. They narrated that between September 2009 and February 2010, De la Cruz made several communications to Alcantara to urge him to call a general membership meeting and to inform him of the consultation meetings and party caucuses being conducted at the respondents' instance in preparation for the May 2010 elections. The respondents added that since Alcantara's letter-response merely sought the deferment of the Supreme Assembly to "early next year"[10] *i.e.*, 2010, an All Leaders Assembly was convened on December 15, 2009, with prior notice to Alcantara, leading to the Supreme Assembly on February 6, 2010.

COMELEC Rulings

The COMELEC Second Division dismissed the petition. It ruled that the holding of an assembly for purposes of electing party officers and the amendment of the party's CBL have long been overdue. Under the party's CBL, a Supreme Assembly must be convened every three years to elect officers and to amend or revise the party's CBL. Under Alcantara's leadership, no Supreme Assembly was convened since ABAKADA's accreditation in 2004.

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[10] *Rollo,* p. 71.

As members in good standing, therefore, the respondents had every right to ask Alcantara to make a call for a Supreme Assembly; the respondents even notified him of earlier meetings and caucuses being held by the party. Because of the petitioners' (particularly, Alcantara's) failure, if not outright refusal, to heed the respondents' requests pursuant to the party's CBL, the respondents had "good cause" to initiate the holding of the meeting.

The petitioners moved for reconsideration of the ruling, mainly questioning the COMELEC Second Division's failure to address the issue of validity of the Supreme Assembly based on the non-membership status of several meeting participants. The COMELEC *En Banc* denied the petitioners' motion under the following terms:

> We find this argument unavailing. While we agree with petitioners' supposition that only legitimate members of a party may move to determine its destiny, we believe that petitioners have failed to prove their allegation that the Supreme Assembly delegates are non-members of the party. [Petitioners] offer nothing to corroborate such assertion except the words of Mr. Alcantara himself, which, to our mind, is self serving, at best. Moreover, we cannot accept their claim that only those one hundred eight (108) individuals listed by them should be considered as legitimate members of ABAKADA Guro. The "Member's Personal Data Cards" that have been submitted by petitioners to confirm the membership of these persons are dated either 2002 or 2003, or during the inception of the party as AASJS, which is at least seven (7) years before the Supreme Assembly of 06 February 2010. At best, what these documents only evince is that the people listed by petitioner are members of AASJS or ABAKADA Guro as of 2003. They do not prove that the attendees in the assailed Supreme Assembly are not legitimate members of the party, for it is quite possible and highly probable that several more individuals have become members of the party since 2002 and 2003. A party like ABAKADA Guro, which was able to gain a seat in Congress following the 2007 elections, could not have remained stagnant as petitioners would have us believe (*sic*).[11]

[11] *Rollo*, pp. 55-56.

With their recourses at the COMELEC exhausted, the petitioners now come before this Court on the present petition for *certiorari* under Rules 64 and 65 of the Rules of Court.

THE PETITION

The petition alleged that the COMELEC gravely abused its discretion when it did not consider Alcantara's affidavit, the submitted list of party members, and the attached individual applications for membership. Since the attendance sheets of the participants in the Supreme Assembly were submitted to the COMELEC, it could have simply compared the submitted lists to determine whether the Supreme Assembly participants are legitimate party members.

Assuming *arguendo* that the participants in the Supreme Assembly were all party members, the petition further alleged that the meeting was not convened in accordance with the party's CBL; thus, the COMELEC should have granted their petition to declare the Supreme Assembly meeting void.

THE RESPONDENTS' COMMENT

The respondents pray for the dismissal of the petition, submitting that the general membership is empowered to take the initiative and call for a Supreme Assembly when the duly elected officials unjustifiably refused to do so. This was what the respondents simply did. Only after sending several letters to petitioner Alcantara and only after a consensus was reached in the All Leaders Assembly in December 15, 2009 (that the Supreme Assembly be convened), all with prior notices to petitioner Alcantara, did respondent Albano, acting as Secretary General, sign and send notices to the chapter leaders who are the official representatives of the general membership.

The respondents further posit that the petitioners cannot invoke ABAKADA's CBL in assailing the validity of the Supreme Assembly because their own refusal to abide by the democratic provisions of the CBL (among others, on electing new officers every three years) is the very violation that prompted the conduct of the party proceeding now being assailed.

The respondents add that during the hearing on the registered party-list groups' continuing compliance with Republic Act No. 7941 and the 1987 Constitution, only respondent De la Cruz and the present ABAKADA composition participated and submitted the necessary documentary and testimonial evidence proving the party's continuing existence and accomplishments for the purpose of party-list accreditation.

OUR RULING

We dismiss the petition.

At the outset, the respondents informed the Court (and the Court takes judicial notice) of the fact that Atty. Alcantara is now running for a seat in the Senate under the group Social Justice Society. The respondents claim that by filing his certificate of candidacy for the Senate under a different party, Alcantara effectively abandoned any claim to the ABAKADA presidency - the position he seeks to recover by asking for the nullity of the Supreme Assembly. They argue that petitioner Alcantara's claim to the presidency of ABAKADA, a marginalized and underrepresented party-list group, is inconsistent with his act of waging an expensive national campaign for the Philippine Senate.

We need not dwell at length on this development as this is not a matter that the parties presented and argued before the COMELEC and which that tribunal resolved; there is no ruling on the matter that is now before us for review. Additionally, what the petitioners question is petitioner Alcantara's expulsion as a party president and as a member of the party when he questioned the legality of the holding of the Supreme Assembly. This was the matter directly litigated before the COMELEC and an issue that the tribunal directly ruled upon. We can resolve this issue without need of considering the effect of petitioner Alcantara's Senate candidacy.

We additionally observe that the respondents merely informed us of the fact of petitioner Alcantara's Senate candidacy but did not at all attempt to show that by running under another group, the Social Justice Society, Alcantara effectively acted

prejudicially or to the detriment of the interests that ABAKADA seeks to advance. We have not been likewise directed to any provision in the ABAKADA's CBL that would support the respondents' claim of inconsistency between ABAKADA leadership and filing of a certificate of candidacy in the Senate.

Hence, petitioner Alcantara's Senate candidacy is a non-issue in the present case.

Valid reasons exist to oust petitioner Alcantara from ABAKADA

Under the Constitution, the COMELEC is empowered to register political parties.[12] More specifically, as part of its power to enforce and administer laws relative to the conduct of an election, the COMELEC possesses the power to register national, regional, and sectoral parties or organizations or coalitions for purposes of the party-list system of elections.[13] It is the party-list group's registration under the party-list system that confers juridical personality on the party-list group for election related purposes.[14]

As a juridical entity, a party-list group can only validly act through its duly authorized representative/s. In the exercise of its power to register parties, the COMELEC necessarily possesses the power to pass upon the question of who, among the legitimate officers of the party-list group, are entitled to exercise the rights and privileges granted to a party-list group under the law. The COMELEC's jurisdiction on this point is well settled and is not here disputed.

With clear jurisdictional authority to resolve the issue of party leadership and party identity, this Court will only be justified in interfering with the COMELEC's action under Rules 64 and 65 of the Rules of Court if the petitioners can establish that the COMELEC acted without or in excess of jurisdiction or with

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[12] Section 2, Article IX-C, 1987 Constitution.

[13] Section 5(1), Article VI; Article IX-C, Section 7, 1987 Constitution; Section 5, Republic Act No. 7941.

[14] *Liberal Party v. Commission*, G.R. No. 191771, May 6, 2010.

grave abuse of discretion amounting to lack or excess of jurisdiction. By grave abuse of discretion is generally meant the capricious and whimsical exercise of judgment equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave, as when it is exercised arbitrarily or despotically by reason of passion or personal hostility. Such abuse must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[15] The petitioners failed to hurdle this barrier.

The petitioners opened their petition with the principle that only members of a registered party can chart its destiny to the necessary exclusion of non-members. The COMELEC correctly observed that while this may be true, all that the petitioners established is the group's membership *as of 2003*. The petitioners failed to account for the group's actual membership at least *as of 2009*, *i.e.*, five (5) years after ABAKADA was accredited and the year immediately prior to the Supreme Assembly held in February 2010 and the party-list elections of May 2010.

What the petitioners presented are simply applications for membership with ABAKADA as of November 3, 2003 during the party's inceptive stage, and Alcantara's affidavit that denies the membership of most of those who attended the 2010 Supreme Assembly. Alcantara alleged on this point that:

> 17. Nonetheless, Jonathan de la Cruz proceeded with the meeting, and in that meeting they removed me and the other officers of the party allied with me. That meeting was illegal because in so far as the participants therein are concerned, I never signed and approved any written applications for membership. While they may be party supporters or guests, they are not necessarily members of the party. I am listing the names of the participants of that meeting here in an alphabetical order for easy reference as follows:
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> x x x

[15] *Cantoria v. Commission on Elections*, G.R. No. 162035, November 26, 2004.

18. These names were culled from the attendance sheets submitted by the group of Jonathan de la Cruz before the Legal Department of [the COMELEC]. Except for a few, they did not submit their applications for membership to me as President of the Party**; I did not approve their membership; neither the National Executive Board**, the policy making body of the party, had seen any written application from any of them nor have approved of their membership into the party.

The petitioners have not pointed out the basis for such broad claim of authority by Alcantara. Under Article IV (Membership) of ABAKADA's CBL,[16] however, the President or the National Executive Board is not given the exclusive authority to approve applications for party membership. Such applications are approved by the membership council in the municipal, city, provincial or regional levels.[17] In turn each municipal unit is entitled to two delegates to the Supreme Assembly while each provincial or city unit is entitled to five delegates.[18]

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[16] Attached as Annex D of the Petition. *In Laban ng Demokratikong Pilipino v. Commission on Elections* (G.R. No. 161265, February 24, 2004), the Court said:

The only issue in this case, as defined by the COMELEC itself, is who as between the Party Chairman and the Secretary General has the authority to sign certificates of candidacy of the official candidates of the party. Indeed, the petitioners' *Manifestation* and *Petition* before the COMELEC merely asked the Commission to recognize only those certificates of candidacy signed by petitioner Sen. Angara or his authorized representative, and no other.

To resolve this simple issue, the COMELEC need only to turn to the Party Constitution. It need not go so far as to resolve the root of the conflict between the party officials. It need only resolve such questions as may be necessary in the exercise of its enforcement powers.

[17] Article IV of Abakada's Constitution reads:

Article IV

MEMBERSHIP

Section 3. Applications for membership in ABAKADA shall be in writing and submitted for approval by the membership council in the municipal, city, provincial or regional levels.

[18] Article VI of Abakada's Constitution.

Given ABAKADA's membership structure, Alcantara's own affidavit and the approved membership applications during the ABAKADA's earliest stage are certainly not sufficient to support the petition's opening legal principle. As the party seeking to nullify the conduct of the Supreme Assembly, the petitioners must first clearly substantiate their allegation on who the legitimate members of ABAKADA were *at the time Supreme Assembly was held*. After this failure, the COMELEC cannot be faulted, much less be charged with committing grave abuse of discretion, in ruling that petitioners failed to discharge its burden of proving that the attendees in the Supreme Assembly were not legitimate members of the party.

We remind the petitioners that the findings of fact of the COMELEC are generally binding on the Court, unless its factual conclusions are clearly shown to be unsupported by substantial evidence.[19] The petitioners have not demonstrated that its case fall within this narrow exception.

Even assuming that all participants in the 2010 *Supreme Assembly* are legitimate members of the party, the petitioners claim that since the Supreme Assembly meeting did not comply with the provisions of the party's CBL, then the COMELEC should have granted their petition to nullify the meeting.

Again, we disagree with the petitioners.

While ABAKADA is registered as a sectoral party, the general principles applicable to political parties as a voluntary association apply to it. Political parties constitute a basic element of our democratic institutional apparatus.[20] Among others, political parties help stimulate public participation in the political arena and translate the results of this participation into meaningful policies and programs of government offered to the electorate. Once in government, they are able to significantly contribute in forging linkages between the government and the society by

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[19] *Benito v. Commission on Elections*, G.R. No. 134913. January 19, 2001.

[20] *Valencia v. Peralta*, G.R. No. L-47771, March 11, 1978; also Section 8, Article III, 1987 Constitution.

adjusting these policies with the varying and often conflicting interests of the different segments of society. Should they belong to the minority, they also provide a check to counterbalance those who are in power.

For these reasons, particularly, for the role they play in the general political process, political parties are generally free to conduct its internal affairs pursuant to its constitutionally-protected right to free association.[21] This includes the determination of the individuals who shall constitute the association and the officials who shall lead the party in attaining its goals.[22] The political parties, through their members, are free to adopt their own constitution and by-laws that contain the terms governing the group in pursuing its goals. These terms, include the terms in choosing its leaders and members, among others. To the group belongs the power to adopt a constitution; to them likewise belongs the power to amend, modify or altogether scrap it.

The petitioners' argument is contrary to these basic tenets. If the validity of the Supreme Assembly would completely depend on the person who calls the meeting and on the person who sends the notice of the meeting – who are petitioners Alcantara and Dabu themselves – then the petitioners would be able to perpetuate themselves in power in violation of the very constitution whose violation they now cite. This kind of result would strike at the heart of political parties as the "basic element of the democratic institutional apparatus." This potential irregularity is what the COMELEC correctly prevented in ruling for the dismissal of the petition.

As the COMELEC correctly observed, ABAKADA's constitution expressly requires the convening of the Supreme Assembly once every three years for purposes of (i) electing the members of the National Executive Board - the governing body of ABAKADA - headed by petitioner Alcantara as President.[23] In contravention of ABAKADA's own constitution,

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[21] *Sinaca v. Mula*. G.R. No. 135691, September 27, 1999.

[22] *Id.*

[23] Article V, Section 1 and Article VI, Section 1 of Abakada's constitution.

no Supreme Assembly was ever held since ABAKADA came into existence in 2003, prompting the respondents to communicate with petitioner Alcantara to urge him "to call for and assemble the leaders, as well as members of the party, for the coming May 2010 elections." This call, to our mind, is far from unreasonable and was in fact a practical approach to a coming political exercise.

Unfortunately, all the respondents' communications appear to have fallen on deaf ears. Instead, the petitioners chose to cling to legal technicalities under the party's constitution over the provisions of the same constitution that promotes democratic accountability within the party. As the COMELEC did, the Court cannot certainly give primacy to matters of procedure over substance in ABAKADA's CBL especially after the general membership has spoken.

The COMELEC, in the exercise of its jurisdiction to resolve party leadership disputes, has rendered its ruling. By failing to establish grave abuse of discretion on the part of the COMELEC, this Court can do no less than dismiss this petition and allow ABAKADA as a sectoral party to determine its own affairs under its present leadership.

WHEREFORE, premises considered, we hereby **DISMISS** the petition.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Abad, J., no part.

EN BANC

[G.R. No. 204591. April 16, 2013]

AGAPAY NG INDIGENOUS PEOPLES RIGHTS ALLIANCE (A-IPRA), *petitioner, vs.* **COMMISSION ON ELECTIONS, MELVIN G. LOTA, MAC-MAC BERNALES, MARY ANNE P. SANTOS, JEAN ANNABELL S. GAROTA, JOSEPH T. EVANGELISTA, *ET AL.*** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS (COMELEC); COMELEC'S RESOLUTION CANCELLING REGISTRATION/ACCREDITATION OF A SECTORAL PARTY DOES NOT AMOUNT TO GRAVE ABUSE OF DISCRETION.— It is a well-settled principle that this Court's jurisdiction to review decisions and orders of electoral tribunals is exercised only upon showing of grave abuse of discretion committed by the tribunal; otherwise, the Court shall not interfere with the electoral tribunal's exercise of its discretion or jurisdiction. Grave abuse of discretion has been defined as the capricious and whimsical exercise of judgment, the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty. The Insigne Group impute grave abuse of discretion on the part of the COMELEC in issuing Resolution dated November 7, 2012 which cancelled A-IPRA's registration/accreditation on the ground of disqualification of its nominees. This issue, however, had already been resolved by this Court in *Atong Paglaum, Inc. v. Commission on Elections*. x x x In *Atong Paglaum*, the Court specifically ruled that the COMELEC did not gravely abuse its discretion x x x in following prevailing decisions of this Court in disqualifying petitioners from participating in the coming 13 May 2013 party-list elections.

2. ID.; ID.; ID.; THE DETERMINATION OF WHO IS THE RIGHTFUL REPRESENTATIVE OF A POLITICAL PARTY OR THE LEGITIMATE NOMINEE OF A PARTY-LIST GROUP LIES WITH THE COMELEC.— As regards the legitimacy of the nomination of the Lota Group raised by the Insigne group in

their petition for intervention and opposition, the same is more aptly addressed to the COMELEC. The determination of who is the rightful representative of a political party or the legitimate nominee of a party-list group lies with the COMELEC, as part and parcel of its constitutional task of registering political parties, organizations and coalitions under Section 2(5), Article IX (C) of the 1987 Constitution.

APPEARANCES OF COUNSEL

John R. Gonzalo for petitioner.
The Solicitor General for public respondent.
The Mallari Law Firm of Abellon Camitan Demetria Mallari & Associates and *Rogelio Dones Evasco* for private respondents.

R E S O L U T I O N

REYES, *J.*:

This is a petition for *certiorari*[1] filed under Rule 64, in relation to Rule 65 of the Rules of Court, seeking to annul and set aside the Resolution[2] dated November 7, 2012 of the Commission on Elections (COMELEC) in SPP Case No. 12-292 (PLM).

Factual Antecedents

Petitioner Agapay ng Indigenous Peoples Rights Alliance (A-IPRA) is a sectoral political party whose primordial objectives are the recognition, protection and promotion of the rights of the indigenous people.[3] It was allowed registration and accreditation by the COMELEC Second Division in its Resolution[4] dated January 13, 2010 in SPP Case No. 09-214 (PL), which reads:

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[1] *Rollo*, pp. 3-44.

[2] *Id.* at 50-54.

[3] *Id.* at 4.

[4] *Id.* at 45-49.

As borne by the evidence, petitioner has ably complied procedurally and substantially with the requirements of Republic Act No. 7941 or Party-List Law as well as with the guidelines enumerated in the case of *Ang Bagong Bayani vs. Comelec*. It has coordinators in almost all of the provinces and cities [of] Region III.

Petitioner committed itself to protect and work for the betterment of the underrepresented [and] marginalized sector of [i]ndigenous peoples by ensuring that their rights, cultural communities and ancestral domains are accorded priority and recognition. Petitioner likewise committed itself to promote the culture of the indigenous people through education and the delivery of basic services to the indigenous cultural communities. Its track record is manifested by its active advocacy for the passage of the IPRA Law (Republic Act No. 8371) by conducting a series of campaigns and seminars to educate and inform the indigenous people of their rights. When the constitutionality of Republic Act No. 8371 or the Indigenous [Peoples] Rights Act was challenged before the Courts, petitioner A-IPRA gave valuable inputs to the National Commission on Indigenous Peoples, resulting in the dismissal of the petition to declare said law unconstitutional.

Moreover, it has supported, defended and lobbied for the passage of laws for the protection and promotion of the rights of [i]ndigenous [p]eople in Congress.

With these, we are convinced that petitioner can truly promote the interests and concerns of the section which its seeks to represent and uplift their living conditions.

WHEREFORE, in view of the foregoing, the petitions [sic] for registration filed by AGAPAY NG INDIGENOUS PEOPLES RIGHTS ALLIANCE, INC. (A-IPRA) is **GRANTED**. Accordingly, the Clerk of the Commission is hereby directed to prepare the necessary certification declaring A-IPRA as a duly registered and accredited regional sectoral party with all the rights and privileges under the law.[5]

A-IPRA participated in the May 2010 elections, with the following as nominees and officers (Insigne Group), namely:

[5] *Id.* at 48.

Nominees:

(1) Atty. Eugenio A. Insigne MNSA
(2) Atty. Gregorio A. Andolana
(3) Atty. Pablo S. Bernardo[6]

Officers:
(1) Ruben R. Sison, President
(2) Ricardo B. Rivera, Vice President for External Affairs
(3) Larry G. Ramos, Vice President for Internal Affairs
(4) Oscar B. Rivera, Public Information Officer
(5) Ronnie T. Dizon, Secretary
(6) Antonio M. Sumilang, Treasurer[7]

Unfortunately, the group failed to muster the necessary number of votes to obtain a seat in Congress.

On May 31, 2012, A-IPRA filed a Manifestation of Intent to Participate in the May 2013 Elections with the COMELEC. Appended in the manifestation is a new list of nominees and officers (Lota Group), consisting of the following individuals:

Nominees:
(1) Melvin G. Lota
(2) Mac-Mac Bernales
(3) Mary Anne P. Santos
(4) Jean Annabell S. Garota
(5) Joseph T. Evangelista

Officers:
(1) Antonio S. Abad, Chairman
(2) Jennita G. Bascones, Vice Chairman for Internal Affairs
(3) Consolacion B. Abad, Vice Chairman for External Affairs
(4) Jordan P. Cimafranca, Secretary General
(5) Oscar D. Celeste, Treasurer
(6) Thomas A. Siy, III, Auditor
(7) Frances Trina A. Salvante, Public Relations Officer[8]

Subsequently, on August 2, 2012, the COMELEC *en banc* issued Resolution No. 9513 entitled "In the Matter of: (1) the

[6] *Id.* at 57.

[7] *Id.* at 63.

[8] *Id.* at 58.

automatic review by the Commission *En Banc* of pending petitions for registration of party-list groups; and (2) setting for hearing the accredited party-list groups or organizations which are existing and which have filed manifestations of intent to participate in the 2013 national and local elections." Pursuant thereto, the COMELEC resolved to review and affirm the grant of registration and accreditation to party-list groups and organizations in order that it may fulfill its role of ensuring that only those parties, groups or organizations with the requisite character consistent with the purpose of the party-list system are registered and accredited to participate in the party-list system of representation. It also suspended the application of Section 19 of the COMELEC Rules of Procedure which pertains to the filing of a motion for reconsideration.

On August 9, 2012, the COMELEC *en banc* issued an Order, requiring A-IPRA to appear before them to present documentary evidence which will establish its continuing compliance with the requirements set forth under Republic Act No. 7941 (R.A. No. 7941) and the guidelines in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*.[9]

On October 11, 2012, the Insigne Group, under the name of A-IPRA, filed a Petition for Intervention with Opposition to the Nomination filed by Bogus Officers of A-IPRA.[10] They alleged that their members remain the legitimate nominees and officers of A-IPRA as they were never replaced in accordance with procedure stated in the by-laws of the organization. Further, they pointed out that the members of the Lota Group are complete strangers to the organization and that their names do not appear in the roster of A-IPRA membership. Even more, they do not appear to be members of the indigenous cultural communities/ indigenous people as they are all residents of Metro Manila and are unknown to the members of A-IPRA. Finally, they charged the Lota Group of submitting fake documents which

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[9] 412 Phil. 308 (2001).

[10] *Rollo*, pp. 55-63.

contained forged signatures.[11] Thus, they prayed that the Lota Group be disqualified as nominees and officers of A-IPRA and that they be recognized as the legitimate nominees and officers of the group and be allowed to participate in the May 2013 elections.[12]

The COMELEC *En Banc's* Ruling

On November 7, 2012, the COMELEC *en banc* issued the assailed Resolution,[13] cancelling the registration and accreditation of A-IPRA. The pertinent portions of the resolution state:

> In the instant case, A-IPRA failed to convince the Commission that it has satisfied the aforequoted guidelines pertaining to party-list nominees. It did not submit proof that would establish that the said nominees are indeed indigenous people; have actively participated in the undertakings of A-IPRA; truly adhere to its advocacies; and most of all, that the said nominees are its bona fide members. It focused solely on presenting its track record/activities. It overlooked the fact that nominees also play a significant role in every party-list group's accreditation/registration.
>
> As they say, representation is easy to claim and to feign. The Commission is thus determined to evaluate with utmost caution not only the petitions for registration of new party-list aspirants but also the accreditation of the existing party-list groups. This goes without saying that substantial compliance of the rules has no place in this so-called "cleansing" of the party-list groups. Thus, no matter how noble the intention of A-IPRA to represent the marginalized and underrepresented sector of indigenous people, its registration should still be cancelled for failure to comply with items 6, 7 and 8 of the Eight-Point Guideline enunciated in *Ang Bagong Bayani.*
>
> **WHEREFORE**, premises considered, the Commission *en banc* **RESOLVED**, as it hereby **RESOLVES**, to **CANCEL** the registration/ accreditation of A-IPRA.
>
> **SO ORDERED**.[14]

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

[12] *Id.* at 62-63.

[13] *Id.* at 50-54.

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

On December 13, 2012, the Insigne Group filed the instant petition with this Court, claiming that the COMELEC gravely abused its discretion in issuing Resolution dated November 7, 2012 and reiterating their prayer to be recognized as the legitimate nominees and officers of A-IPRA.

Issue

WHETHER THE COMELEC GRAVELY ABUSED ITS DISCRETION IN ISSUING RESOLUTION DATED NOVEMBER 7, 2012.

This Court's Ruling

It is a well-settled principle that this Court's jurisdiction to review decisions and orders of electoral tribunals is exercised only upon showing of grave abuse of discretion committed by the tribunal; otherwise, the Court shall not interfere with the electoral tribunal's exercise of its discretion or jurisdiction. Grave abuse of discretion has been defined as the capricious and whimsical exercise of judgment, the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty.[15]

The Insigne Group impute grave abuse of discretion on the part of the COMELEC in issuing Resolution dated November 7, 2012 which cancelled A-IPRA's registration/accreditation on the ground of disqualification of its nominees. This issue, however, had already been resolved by this Court in *Atong Paglaum, Inc. v. Commission on Elections.*[16] It is well to remember that the Lota Group also filed a separate petition for *certiorari* with this Court, challenging the same resolution of the COMELEC. The said petition was docketed as G.R. No. 204125 and was consolidated with several other cases questioning similar issuances by the COMELEC. Eventually, the Court resolved the consolidated cases in *Atong Paglaum* by upholding the validity of the issuances of the COMELEC,

[15] *Dueñas, Jr. v. HRET*, G.R. No. 191550, May 4, 2010, 620 SCRA 78, 80, citing *Abubakar v. HRET*, G.R. Nos. 173310 and 173609, March 7, 2007, 517 SCRA 762, 776; *Torres v. HRET*, 404 Phil. 125 (2001); *Villarosa v. HRET*, 394 Phil. 730 (2000).

[16] G.R. No. 204125, April 2, 2013.

albeit, ordering that all the petitions be remanded to the COMELEC for reevaluation of the qualifications of the party-list groups based on the new set of parameters laid down in the mentioned decision.

In *Atong Paglaum*, the Court specifically ruled that the COMELEC did not gravely abuse its discretion, thus:

> We hold that the COMELEC did not commit grave abuse of discretion in following prevailing decisions of this Court in disqualifying petitioners from participating in the coming 13 May 2013 party-list elections. However, since the Court adopts in this Decision new parameters in the qualification of national, regional, and sectoral parties under the party-list system, thereby abandoning the rulings in the decisions applied by the COMELEC in disqualifying petitioners, we remand to the COMELEC all the present petitions for the COMELEC to determine who are qualified to register under the partylist system, and to participate in the coming 13 May 2013 party-list elections, under the new parameters prescribed in this Decision.[17]

With a definite ruling of this Court on the absence of grave abuse of discretion in the consolidated cases of *Atong Paglaum*, the instant petition had become moot and academic and must therefore be dismissed.

As regards the legitimacy of the nomination of the Lota Group raised by the Insigne group in their petition for intervention and opposition, the same is more aptly addressed to the COMELEC. The determination of who is the rightful representative of a political party or the legitimate nominee of a party-list group lies with the COMELEC, as part and parcel of its constitutional task of registering political parties, organizations and coalitions under Section 2(5),[18] Article IX(C) of the 1987 Constitution.

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[17] *Id.*

[18] Section 2. x x x

x x x x x x x x x

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the

In *Laban ng Demokratikong Pilipino v. COMELEC*,[19] this Court held that the COMELEC correctly ruled that "the ascertainment of the identity of a political party and its legitimate officers is a matter that is well within its authority. The source of this authority is no other than the fundamental law itself, which vests upon the COMELEC the power and function to enforce and administer all laws and regulations relative to the conduct of an election."[20]

Apparently, the COMELEC failed to resolve the issue of the legitimacy of the nomination of the Lota Group in its Resolution dated November 7, 2012 and this was raised as an issue by the Insigne Group in the instant petition. However, with the remand of all the petitions to the COMELEC and the directive for it to redetermine the qualifications of the petitioning party-list groups, it is only appropriate that the Insigne Group present their challenge to the legitimacy of the Lota Group's nomination before the Commission to give it the opportunity to rule on the matter at the same time that it reevaluates A-IPRA's qualifications to run in the May 2013 elections based on the new set of guidelines in *Atong Paglaum*.

WHEREFORE, the instant petition is **DISMISSED** for having become moot and academic.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

[19] 468 Phil. 70 (2004).

[20] *Id.* at 80, citing 1987 PHILIPPINE CONSTITUTION, Art. IX-C, Sec. 2 (1).

EN BANC

[G.R. No. 204637. April 16, 2013]

LIWAYWAY VINZONS-CHATO, *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and ELMER E. PANOTES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; ELECTORAL PROTEST; THE POWER OF THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) TO EXAMINE THE CONDITIONS OF THE BALLOT BOXES AND THEIR CONTENTS, UPHELD.— It bears stressing that the HRET's Order dated April 10, 2012 was issued to resolve Panotes' motion to suspend the continuance of the revision proceedings in 75% of the contested CPs. The HRET's findings then anent the integrity of the ballot boxes were at the most, preliminary in nature. The HRET was in no way estopped from subsequently holding otherwise after it had the opportunity to exhaustively observe and examine in the course of the entire revision proceedings the conditions of all the ballot boxes and their contents, including the ballots themselves, the MOV, SOV s and ERs.

2. ID.; ID.; ID.; WHERE THE HRET HAS DISPOSED OF AN ELECTORAL PROTEST BASED ON THE EXISTING EVIDENCE AND THE RECORDS, IT CANNOT BE SAID THAT IT ACTED WITH GRAVE ABUSE OF DISCRETION.— Chato attempts to convince us that the integrity of the physical ballots was preserved, while that of the CF cards was not. As mentioned above, the integrity of the CF cards is already a settled matter. Anent that of the physical ballots, this is a factual issue which calls for a re-calibration of evidence. Generally, we do not resolve factual questions unless the decision, resolution or order brought to us for review can be shown to have been rendered or issued with grave abuse of discretion. x x x In the case at bar, the HRET disposed of Chato's electoral protest without grave abuse of discretion. The herein assailed decision and resolution were rendered on the bases of existing evidence and records presented before the HRET.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioner.
Melamarisa M. Panotes for private respondent.

R E S O L U T I O N

REYES, *J.*:

Before us is a Petition for *Certiorari* and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Prohibitory Injunction[1] assailing the Decision[2] rendered on October 15, 2012 and Resolution[3] issued on December 3, 2012 by the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 10-040 (EP). The Decision dated October 15, 2012 and Resolution dated December 3, 2012 denied herein petitioner Liwayway Vinzons-Chato's (Chato) electoral protest filed before the HRET to challenge the proclamation of herein respondent, Elmer Panotes (Panotes), as the duly elected Representative of the Second District of Camarines Norte.

In the May 10, 2010 elections, Chato and Panotes both ran for the congressional seat to represent the Second District of Camarines Norte. On May 12, 2010, Panotes was proclaimed as the winner for having garnered 51,704 votes. The votes cast for Chato totalled 47,822.

On May 24, 2010, Chato filed an electoral protest claiming that in four of the seven municipalities[4] comprising the Second District of Camarines Norte, the following irregularities occurred: (a) the Precinct Count Optical Scan (PCOS) machines rejected

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[1] *Rollo*, pp. 3-54.

[2] *Id.* at 55-87.

[3] *Id.* at 116.

[4] Chato named Daet, Vinzons, Basud and Mercedes as the four towns where irregularities allegedly took place. The clustered precincts in these four towns totalled 160.

and failed to count the votes, which if manually counted and visually appreciated, were in fact validly cast for her; (b) the PCOS machines broke down in some clustered precincts (CPs) and the ballots were inserted in contingency machines at later times rendering uncertain the actual inclusion of the votes in the final tally; (c) the protocols prescribed by the Commission on Elections (COMELEC) relative to the installation of the PCOS machines and Canvassing and Consolidation System (CCS), counting of ballots, canvassing and transmission of results, and closing of the voting were either not followed or modified making it possible for the tampering and manipulation of the election results; (d) several compact flash (CF) cards in the PCOS machines were reconfigured on the eve of the May 10, 2010 elections; (e) there were errors or lapses in transmitting results from several PCOS machines to the CCS of the Municipal Boards of Canvassers (MBOCs) resulting to the need to manually insert CF cards into the CCS, but in some instances, the insertions were made after significant and unaccounted lapse of time in cases where before transporting the CF cards to the MBOCs, the members of the Boards of Election Inspectors (BEIs) went home first or did private business; and (f) after the closing of the polls, some CF cards failed to show recorded results.[5]

On March 21, 2011, the HRET started the initial revision of ballots in 25% of the pilot protested CPs. The revision ended on March 24, 2011. Per physical count, Chato's votes increased by 518, while those cast for Panotes decreased by 2,875 votes. The detailed results follow:[6]

	VOTES FOR CHATO			VOTES FOR PANOTES		
Municipalities	Per Election Returns (ERs)	Per Physical Count	Gain or (Loss)	Per Election Returns	Per Physical Count	Gain or (Loss)
Basud	1,735	1,891	156	3,067	2,242	(825)
Daet	3,337	3,704	367	5,229	3,186	(2,043)

[5] *Rollo*, pp. 56-57.

[6] *Id.* at 59.

Mercedes	779	779	0	1,573	1,573	0
Vinzons	1,628	1,623	(5)	3,224	3,217	(7)
Total	7,479	7,997	518	13,093	10,218	(2,875)

Panotes filed an Urgent Motion to Suspend Proceedings with Motion for Preliminary Hearing to Determine the Integrity of the Ballots and Ballot Boxes Used in the May 10, 2010 Elections in the Contested Precincts of the Second District of Camarines Norte and to Direct the Printing of the Picture Images of the Ballots of the Subject Precincts.[7] Panotes claimed that in Daet and Basud: (a) the top cover of some of the ballot boxes were loose, and ballots, Minutes of Voting (MOV) and ERs can be taken out; (b) when keys were inserted into the padlocks of the ballot boxes, the upper portion of the locks disconnected from the bodies indicating tampering; (c) the packing tape seals, which he was able to put in some of the ballot boxes, were broken or cut, leading to the conclusion that the boxes had been opened prior to the initial revision; (d) some self-locking security seals were not properly attached; and (e) the contents of some of the ballot boxes, such as the MOV and ERs were either missing or in disarray, with the ballots unnecessarily folded or crumpled in the CPs, where the votes cast for him substantially decreased as per physical count when compared to the figures found in the ERs.

On March 22, 2012, the HRET issued Resolution No. 12-079 directing the continuance of the revision of ballots in 75% of the contested CPs. The proceeding commenced on May 2, 2012 and ended on May 9, 2012. The results were:[8]

	VOTES FOR CHATO			VOTES FOR PANOTES		
Municipalities	Per Election Returns (ERs)	Per Physical Count	Gain or (Loss)	Per Election Returns	Per Physical Count	Gain or (Loss)
Basud	4,792	5,259	467	4,812	3,163	(1,649)

[7] *Id.* at 194-200.

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

Daet	12,569	13,312	743	12,856	9,029	(3,827)
Mercedes	8,553	8,554	1	6,166	6,166	0
Vinzons	5,085	5,087	2	4,883	4,883	0
Total	30,999	32,212	1,213	28,717	23,241	(5,476)

As shown above, there was a substantial discrepancy between the figures indicated in the ERs/Statements of Votes by Precinct (SOVPs) on one hand, and the results of the physical count during the revision, on the other. Thereafter, the HRET issued Resolution No. 11-208 directing the decryption and copying of the picture image files of ballots (PIBs). The proceeding was conducted within the COMELEC premises. However, Chato alleged that the back-up CF card for CP No. 44 of the Municipality of Daet and the CF card for CP No. 29 of the Municipality of Mercedes did not contain the PIBs. Chato filed before the HRET an Urgent Motion to Prohibit the Use by Protestee of the Decrypted and Copied Ballot Images. The HRET denied Chato's motion through Resolution No. 11-321 issued on June 8, 2011.

Panotes filed before us a petition[9] assailing HRET Resolution No. 12-079. On her part, Chato instituted a petition[10] challenging HRET Resolution No. 11-321. We ordered the consolidation of the two petitions, and both were dismissed in a decision which we rendered on January 22, 2013. Panotes' petition was moot and academic since revision was in fact completed. Chato, on the other hand, was not able to present sufficient evidence to prove that the integrity of the CF cards was not preserved.

Going back to HRET Case No. 10-040 (EP), in the 160 protested CPs, there were substantial variances in the figures per machine count as indicated in the ERs, on one hand, and per physical count, on the other, in a total of 69 CPs, 23 of

[9] Entitled "*Elmer E. Panotes v. HRET and Liwayway Vinzons-Chato*" and docketed as G.R. No. 201350.

[10] Entitled "*Liwayway Vinzons-Chato v. HRET and Elmer Panotes*" and docketed as G.R. No. 199149.

which were in Basud and 46 in Daet. The HRET then tediously compared the paper ballots that were fed to the PCOS machine in these 69 CPs with the corresponding PIBs in the CF cards to resolve the discrepancies. The bar codes at the bottom right of the PIBs were compared with those indicated in the paper ballots. However, the HRET found that while the name of Chato was shaded in some of the paper ballots objected to by Panotes, there were no votes (NV) for congressional representative reflected in the PIBs.[11] Notably, the number of ballots gained by Chato during the physical count of votes is directly proportional with the number of paper ballots for her objected to by Panotes with NV on the congressional representative line per PIBs.[12] The HRET likewise observed that per physical count, there was a substantial increase in the number of stray votes by reason of over voting (OV) for congressional representative. The decryption and copying of the PIBs revealed that there were only a few PIBs with OV for the said position.[13] Panotes' loss per physical count is more or less proportionate with the number of ballots, which Chato claimed as having exhibited stray over voting for the congressional representative line.[14]

Chato and Panotes presented their respective evidence before the HRET.

Among the evidence offered by Chato were: (a) certified true copies of the Transcript of Stenographic Notes (TSN) of the testimony of Atty. Anne A. Romero-Cortez[15] (Atty. Cortez) on June 2, 2010 when she explicitly said before the Congress, acting as the Presidential and Vice-Presidential Board of Canvassers, that "for the municipalities of Labo, Vinzons and Basud, there were CF cards that had to be replaced because

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[11] *Rollo*, pp. 70-71.

[12] *Id.* at 71.

[13] *Id.* at 73.

[14] *Id.*

[15] Provincial Elections Supervisor and Chairperson of the Provincial Board of Canvassers for Camarines Norte.

they were defective"; (b) the testimony of Angel Averia (Averia),[16] who, during the decryption and copying of the PIBs in the COMELEC premises on April 26, 2011, had allegedly heard COMELEC Director Esther Roxas (Director Roxas) admit that there was no inventory of the CF cards; (c) Panotes' own admission in his Opposition to the Motion to Reiterate the Continuation of Revision, dated March 22, 2011, to the effect that "the main CF card for CP 44 of the Municipality of Daet is missing and it would appear that the Election Officer submitted the back-up CF card in lieu thereof" but the "back-up CF card did not contain the picture image of the ballots"; and (d) Panotes' admission in the aforesaid Opposition that "in the Municipality of Mercedes, the BEI re-zeroed the results of the elections in CP No. 29," and consequently, the PIBs for these precincts were erased from the CF card's memory.[17]

Following were among Panotes' claims to establish that in order to tilt the results of the electoral protest in Chato's favor, the paper ballots were tampered after the canvassing, counting and transmission of the voting results in the May 10, 2010 elections were completed: (a) the testimonies of Philip Fabia and Danilo Sibbaluca that "the ballot boxes used in the May 10, 2010 elections could be turned upside down and the bottom portion of the ballot box could be lifted so that the contents could be taken out";[18] (b) the reports of the HRET Revision Committees stating that in Daet and Basud, some of the padlocks and self-locking security seals in the ballot boxes were either missing or not properly attached, and the MOVs and ERs were likewise nowhere to be found;[19] (c) the testimony of Benjamina Camino that during the revision, in the matched paper ballots and PIBs, the votes were identical except those for the position of congressional representative;[20] (d) testimony of Florivida

[16] Information Technology witness.

[17] *Rollo,* pp. 14-15.

[18] *Id.* at 181.

[19] *Id.* at 180.

[20] *Id.* at 175.

Mago[21] indicating that in the Random Manual Audit (RMA) conducted on the same day right after the closing of the polls, the team found that out of 420 valid votes counted by the PCOS machine, there was none with an over-vote for the congressional seat line, and there was only a single difference between the automated result and the manual count;[22] (e) in direct contrast with the RMA team's findings, in the revision report for CP No. 23 of Basud, 99 ballots reflected over-votes for the congressional seat line;[23] (f) the main CF card for CP No. 44 of Daet had already been retrieved from the ballot box of the municipality's MBOC and its contents decrypted;[24] (g) even granting for argument's sake that in Mercedes, the BEI re-zeroed the results of the elections in CP No. 29, this has no bearing since the physical count of the ballots jived with the results indicated in the ER;[25] (h) Chato took out of context Atty. Cortez's testimony before the Congress because what the latter stated was that the defective CF cards were replaced with working ones on May 10, 2010 and not after;[26] and (i) Atty. Cortez and Director Roxas were not presented as witnesses before the HRET, hence, the statements ascribed to them by Chato do not bear weight.[27]

The HRET found that out of the 160 contested CPs, there were 91 without substantial variances between the results of the automatic and the manual count. However, in 69 CPs in Basud and Daet, the variances were glaring.

On October 15, 2012, the HRET rendered the herein assailed decision dismissing Chato's electoral protest based on the following grounds:

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[21] Chairperson of the Random Manual Audit Team for CP No. 23 of Basud.

[22] *Rollo*, pp. 183-184.

[23] *Id.* at 184.

[24] *Id.* at 189.

[25] *Id.* at 189-190.

[26] *Id.* at 190-191.

[27] *Id.* at 191-192.

[T]he settled rule in election contests is that the ballots themselves constitute the best evidence of the will of the voters, but the ballots lose this character and give way to the acceptance of the election returns when it has been shown that they have been [the] subject of tampering, either by substituting them with other official or fake ballots, or by substantially altering or changing their contents.

Consequently, the votes determined after the revision in the foregoing **69 CPs in Basud and Daet, which yielded a reversal of votes**, cannot be relied upon, as they do not reflect the true will of the electorate. Hence, the Tribunal has to rely on what is reflected in the election returns and/or statement of votes by precinct[,] the same being the best evidence of the results of the election in said precincts in lieu of the altered ballots.

x x x x x x x x x

The votes of the parties per physical count in all the 120 [sic] protested CPs in the concerned district are 40,209 for protestant [Chato] and 33,459 for protestee [Panotes].

Considering that **69 CPs have substantial variances**, the Tribunal decided to disregard the ballots therein, *i.e.*, 18,535 for protestant and 10,858 for protestee, and to consider, instead, the **results in the election returns, *i.e.*, 16,802 for protestant and 19,202 for protestee**.

Hence, only the ballots in the **91 CPs without substantial variances**, *i.e.*, **21,674 for protestant and 22,601 for protestee**, had undergone appreciation of ballots. Of the ballots appreciated, the Tribunal **rejected two (2)** ballots for **protestant** and **two (2)** ballots for **protestee**, while it **admitted 176** ballots claimed by the **protestant** and **183** claimed by the **protestee.**

The votes of the parties in the **uncontested municipalities** are **9,338** for protestant and **9,894** for protestee.

Accordingly, the parties' votes, after recount and appreciation and examination of the evidence presented in the 160 protested CPs as well as in the uncontested municipalities, are summarized below:

	[Chato]	**[Panotes]**
Votes in the 91 revised protested CPs **without SV** [substantial variance] per recount and appreciation	21,674	22,601

Add: Votes per ER/SOVP in 69 revised protested CPs **with SV**	16,802	19,202
Less: Rejected Ballots Objected to in the 91 revised protested CPs **without SV**	(2)	(2)
Add: Admitted PCOS Rejected Ballots Claimed in the 91 revised protested CPs **without SV**	176	183
Add: Votes in the uncontested municipalities	9,338	9,894
Equals: Total votes of the parties in the congressional district	**47,988**	**51,878**
Winning Margin of Protestee		**3,890**

The foregoing results of revision and appreciation of ballots in the protested CPs, and the evidence of the parties indicate that protestee's proclamation margin of 3,882 [votes] **increased** by **eight (8)**.[28] (Citations omitted)

On December 3, 2012, the HRET denied Chato's motion for reconsideration to the Decision dated October 15, 2012.

Central to the resolution of the instant petition are the issues of whether or not the HRET committed grave abuse of discretion when it:

(a) disregarded the results of the physical count in the 69 CPs when the HRET had previously held that the integrity of the ballot boxes was preserved and that the results of the revision proceedings can be the bases to overturn those reflected in the election returns;

(b) resorted to the PIBs, regarded them as the equivalent of the paper ballots, and thereafter ruled that the integrity of the latter was doubtful;

[28] *Id.* at 76-85.

(c) held that Chato had failed to prove by substantial evidence that the CF cards used in the May 10, 2010 elections were not preserved.

In support of the instant petition, Chato reiterates her allegations in the proceedings before the HRET. She stresses that in the Order[29] issued on April 10, 2012, the HRET ruled that as regards the conditions of the ballot boxes in Basud and Daet, the self-locking security seals and padlocks were attached and locked, hence, "there was substantial compliance with statutory safety measures to prevent reasonable opportunity for tampering with their contents x x x."[30] Chato likewise argues that under Republic Act (R.A.) No. 9369,[31] the May 10, 2010 Automated Election System was paper-based[32] and the PIBs are not the official ballots. Further, under Section 15 of R.A. No. 8436, what should be regarded as the official ballots are those printed by the National Printing Office (NPO) and/or the *Bangko Sentral ng Pilipinas* (BSP), or by private printers contracted by the COMELEC in the event that the NPO and the BSP both certify that they cannot meet the printing requirements. Chato once again referred to the statements allegedly made by Atty. Cortez, Averia and Panotes himself to prove that serious doubt exists relative to the integrity of the CF cards used in the May 10, 2010 elections.

Panotes refutes the foregoing in his Comment[33] to the instant petition. He points out that in *Liwayway Vinzons-Chato v.*

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[29] *Id.* at 117-122.

[30] *Id.* at 120.

[31] An Act Amending R.A. No. 8436, entitled "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in Subsequent National and Local Electoral Exercises, to Encourage Transparency, Credibility, Fairness and Accuracy of Elections, Amending for the Purpose Batas Pambansa Blg. 881, as Amended, Republic Act No. 7166 and Other Related Election Laws, Providing Funds Therefor and for Other Purposes"

[32] *Rollo*, p. 38, citing *Roque v. COMELEC*, G.R. No. 188456, September 10, 2009, 599 SCRA 69.

[33] *Id.* at 153-193.

HRET and Elmer Panotes,[34] we sustained the PIBs as the functional equivalent of paper ballots, thus, they may be used for revision purposes. Further, the HRET had categorically ruled in the herein assailed decision that the physical ballots were altered or tampered, hence, not reflective of the true will of the electorate. Besides, Chato's electoral protest was flimsily anchored on the alleged missing CF card in CP No. 44 of Daet. Panotes emphasizes that the CF card had already been retrieved. Even if it were not found, there are 14 CPs in Daet and one incident of a missing CF card cannot create a strong presumption that all such cards in the entire Second District of Camarines Norte had been tampered.

There is no merit in the instant petition.

Chato posits that since the HRET, in its Order dated April 10, 2012, had already considered the conditions of the ballot boxes as indicative of having substantially complied with "statutory safety measures to prevent reasonable opportunity for tampering with their contents",[35] its subsequent disregard of the results of the physical count in the 69 CPs in Daet and Basud was tainted with grave abuse of discretion.

We do not agree.

It bears stressing that the HRET's Order dated April 10, 2012 was issued to resolve Panotes' motion to suspend the continuance of the revision proceedings in 75% of the contested CPs. The HRET's findings then anent the integrity of the ballot boxes were at the most, preliminary in nature. The HRET was in no way estopped from subsequently holding otherwise after it had the opportunity to exhaustively observe and examine in the course of the entire revision proceedings the conditions of all the ballot boxes and their contents, including the ballots themselves, the MOV, SOVs and ERs.

We need not belabor the second and third issues raised herein as the same had been resolved in the following wise in *Liwayway*

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[34] *Supra* note 10.

[35] *Rollo*, p. 120.

Vinzons-Chato v. HRET and Elmer Panotes[36] and *Elmer E. Panotes v. HRET and Liwayway Vinzons-Chato*:[37]

> Section 2(3) of R.A. No. 9369 defines "official ballot" **where AES** [Automated Election System] **is utilized** as the "paper ballot, whether printed or generated by the technology applied, that faithfully captures or represents the votes cast by a voter recorded or to be recorded in electronic form."
>
> x x x x x x x x x
>
> [T]he May 10, 2010 elections used a paper-based technology that allowed voters to fill out an official paper ballot by shading the oval opposite the names of their chosen candidates. Each voter was then required to personally feed his ballot into the Precinct Count Optical Scan (PCOS) machine which scanned both sides of the ballots simultaneously, meaning, in just one pass. As established during the required demo tests, the system captured the images of the ballots in encrypted format which, when decrypted for verification, were found to be digitized representations of the ballots cast.
>
> As such, the printouts thereof [PIBs] are the functional equivalent of the paper ballots filled out by the voters and, thus, may be used for purposes of revision of votes in an electoral protest.
>
> x x x x x x x x x
>
> x x x [T]he HRET found Chato's evidence insufficient. The testimonies of the witnesses she presented were declared irrelevant and immaterial as they did not refer to the CF cards used in the 20 precincts in the Municipalities of Basud and Daet with substantial variances x x x.
>
> To substitute our own judgment to the findings of the HRET will doubtless constitute an intrusion into its domain and a curtailment of its power to act of its own accord on its evaluation of the evidentiary weight of testimonies presented before it. Thus, for failure of Chato to discharge her burden of proving that the integrity of the questioned cards had not been preserved, no further protestations to the use of the picture images of the ballots as stored in the CF cards should be entertained. (Citations omitted)

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[36] *Supra* note 10.

[37] *Supra* note 9.

Chato attempts to convince us that the integrity of the physical ballots was preserved, while that of the CF cards was not. As mentioned above, the integrity of the CF cards is already a settled matter. Anent that of the physical ballots, this is a factual issue which calls for a re-calibration of evidence. Generally, we do not resolve factual questions unless the decision, resolution or order brought to us for review can be shown to have been rendered or issued with grave abuse of discretion.

In *Dueñas, Jr. v. HRET*,[38] we defined grave abuse of discretion, *viz*:

> It is such capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction. Ordinary abuse of discretion is insufficient. The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In other words, for a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. There is also grave abuse of discretion when there is a contravention of the Constitution, the law or existing jurisprudence. x x x.[39] (Citation omitted)

In the case at bar, the HRET disposed of Chato's electoral protest without grave abuse of discretion. The herein assailed decision and resolution were rendered on the bases of existing evidence and records presented before the HRET.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is **DISMISSED** for lack of merit. The Decision dated October 15, 2012 and Resolution dated December 3, 2012 of the House of Representatives Electoral Tribunal in HRET Case No. 10-040 (EP) are **AFFIRMED.**

SO ORDERED.

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[38] G.R. No. 185401, July 21, 2009, 593 SCRA 316.

[39] *Id.* at 344-345.

Sereno, C.J. (Chairperson), Carpio, Leonardo-de Castro, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Velasco, Jr., J., no part due to participation in HRET.

Brion, J., no part, previous HRET member.

Peralta and *Bersamin, JJ.,* no part, members of the HRET.

FIRST DIVISION

[A.C. No. 5119. April 17, 2013]

ROSARIO BERENGUER-LANDERS and PABLO BERENGUER, *complainants, vs.* **ATTY. ISABEL E. FLORIN, ATTY. MARCELINO JORNALES and ATTY. PEDRO VEGA,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; GROSS IGNORANCE OF THE LAW; ISSUANCE OF A WRIT OF EXECUTION OF A JUDGMENT WHICH HAS NOT YET BECOME FINAL AND EXECUTORY CONSTITUTES GROSS IGNORANCE OF THE LAW.— While a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice, the facts on hand prove otherwise. Florin's issuance of the writ of execution and writ of possession in order to fully implement Regional Director Dalugdug's Order dated February 15, 1999 clearly constitutes ignorance of the law for as a rule, a writ of execution is issued only after the subject judgment or order has already become final and executory. As aptly stated

by IBP Commissioner San Juan, Florin ordered the issuance of such writs despite the pendency of the appeal with the DARAB.

2. ID.; ID.; ID.; ID.; PENALTY OF SUSPENSION FOR THREE MONTHS WITHOUT PAY, IMPOSED.— Judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do injustice will be administratively sanctioned. In this case, it appears, however, that this is the first time that Florin has been made administratively liable. Although there is no showing that malice or bad faith attended the commission of the acts complained of, the same does not negate the fact that Florin executed an act that would cause an injustice to the Berenguers. To our mind, the act of issuing the writ of execution and writ of possession is not simply an honest error in judgment but an obstinate disregard of the applicable laws and jurisprudence. With all these, the Court deems it reasonable to reconsider the penalty recommended and instead impose the penalty of suspension for three (3) months without pay.

APPEARANCES OF COUNSEL

De Jesus De Jesus & De Jesus for complainants.

D E C I S I O N

REYES, *J.*:

This is a complaint [1] for disbarment filed by Rosario Berenguer-Landers and Pablo Berenguer (complainants) against herein respondents Isabel E. Florin (Florin), Marcelino Jornales (Jornales) and Pedro Vega (Vega).

The factual antecedents are as follows:

Remedios Berenguer-Lintag, Carlo Berenguer and Belinda Berenguer-Aguirre, Rosario Berenguer-Landers and Pablo Berenguer (Berenguers) are the registered owners of a 58.0649-

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

hectare land in Bibingcahan, Sorsogon, Sorsogon. Sometime in April 1998, a notice of coverage was issued by the Department of Agrarian Reform (DAR) regarding the acquisition of their landholding pursuant to Republic Act No. 6657 or the Comprehensive Agrarian Reform Program (CARP). The Berenguers protested and applied for the exclusion of their land with the DAR and for a notice to lift coverage based on the ground that their landholdings have been used exclusively for livestock pursuant to DAR Administrative Order No. 09.[2]

On October and November 1998, the DA R Secretary, without acting on the application for exclusion, cancelled the Berenguers' certificates of title on the land and issued Certificates of Land Ownership Award[3] (CLOAs) in favor of the members of the Baribag Agrarian Reform Beneficiaries Development Cooperative (BARIBAG).

Eventually, DAR Regional Director Percival Dalugdug (Dalugdug) denied their application for exclusion from the CARP's coverage in the Order[4] dated February 15, 1999 based on the Investigation Report dated February 9, 1999 submitted by the DAR Region V Investigation that said area sought to be excluded is principally devoted to coconuts and not the raising of livestock.[5]

Aggrieved, the Berenguers filed a **notice of appeal**[6] with the Secretary of DAR.

While the case was pending appeal, BARIBAG filed a petition[7] for the implementation of the Order dated February 15, 1999 before the Regional Agrarian Reform Adjudicator (RARAD). This was granted by Florin, as RARAD, in an Order[8]

[2] *Id.* at 23-30.

[3] *Id.* at 185-203.

[4] *Id.* at 31-36.

[5] *Id.* at 33-35.

[6] *Id.* at 37-44.

[7] *Id.* at 45-47.

[8] *Id.* at 76-78.

dated March 15, 1999. Accordingly, respondent Florin directed the issuance and implementation of the Writ of Possession.[9]

On March 19, 1999, the Berenguers filed a motion for reconsideration,[10] claiming that they were denied due process as they were not furnished with a copy of BARIBAG's petition for implementation. Florin denied the motion for reconsideration for lack of merit in an Order[11] dated March 22, 1999.

On March 25, 1999, the Berenguers appealed[12] to the DAR Adjudication Board (DARAB). BARIBAG, on other hand, filed a Motion for the Issuance of a Writ of Possession.[13] The Berenguers opposed[14] the motion saying that the execution would be premature in view of their pending appeal before the DARAB. Nevertheless, BARIBAG still filed a Motion for the Appointment of a Special Sheriff.[15]

In his Order[16] dated April 6, 1999, DAR Acting Secretary Conrado S. Navarro denied the Berenguers' appeal.

On April 8, 1999, Florin issued a Resolution,[17] which granted BARIBAG's Motion for the Appointment of a Special Sheriff and ordered the issuance of the writ of possession prayed for.

On April 13, 1999, the Berenguers filed a motion to set aside[18] the Resolution dated April 8, 1999, arguing that: the

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[9] *Id.* at 204-206.

[10] *Id.* at 89-92.

[11] *Id.* at 93-95.

[12] *Id.* at 96.

[13] *Id.* at 97-99.

[14] *Id.* at 100-104.

[15] *Id.* at 105-106.

[16] *Id.* at 48-54.

[17] *Id.* at 111-113.

[18] *Id.* at 114-120.

DARAB already acquired jurisdiction over case when they seasonably filed an appeal before it; and that Florin should have waited until the DARAB has decided the appeal. In an Order[19] dated April 21, 1999, Florin denied the said motion prompting the Berenguers to move for her inhibition[20] on ground of partiality.

The Berenguers elevated the matter via petition for *certiorari* to the Court of A ppeals (CA), docketed as CA-G.R. SP No. 51858, which was denied outright on procedural grounds, to wit: (1) copy of the assailed order bears the words "certified true copy" but the name and authority of the person certifying is not indicated as required in SC Circular No. 3-96, and the signature therein is illegible; (2) only one of the petitioners signed the certification on non-forum shopping which is an insufficient compliance of Section 1, Rule 65 of the 1997 Rules of Court; and (3) there is non-exhaustion of administrative remedies as the assailed order of the Regional Director is not directly reviewable by the CA.[21]

Undaunted, the Berenguers filed a second petition for *certiorari* with the CA , docketed as CA-G.R. SP No. 53174, which questioned the Orders dated March 15, 1999 and March 22, 1999 issued by Florin. The petition was also denied on grounds of lack of jurisdiction and wrong mode of appeal.[22]

Thus, Florin issued on April 21, 1999 a Writ of Possession[23] in favor of BARIBAG.

Florin subsequently directed the full implementation of the writ of possession pursuant to Rule 71 of the Rules of Court in spite of the Berenguers' protestations.[24]

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[19] *Id.* at 123-125.

[20] *Id.* at 126-130.

[21] *Id.* at 246.

[22] *Id.* at 249-250.

[23] *Id.* at 204-206.

[24] *Id.* at 291-293.

On June 3, 1999, the Berenguers moved to quash[25] the Writ of Possession, to no avail.

On August 4, 1999, the complainants filed the instant Complaint[26] for the disbarment of respondents Florin, Jornales, in his capacity as Assistant Regional Director for DAR, and Vega, in his capacity as DAR Legal Officer V, for allegedly conspiring and confederating in the commission of the following acts:

A. ATTY. ISABEL E. FLORIN AS REGIONAL ADJUDICATOR KNOWINGLY RENDERING AN UNJUST JUDGEMENT, ORDERS AND RESOLUTIONS ADVERSE AND PREJUDICIAL TO THE INTEREST OF PETITIONERS[;]

B. ISSUING AN ORDER AND GRANTING A WRIT OF EXECUTION *EX-PARTE* AND SUBSEQUENTLY ISSUING AND SIGNING THE WRIT OF POSSESSION WITHOUT CERTIFICATION OF FINALITY ISSUED BY THE PROPER OFFICER FULLY KNOWING THAT SHE HAS NO AUTHORITY AND TOTALLY DISREGARDING THE APPLICABLE RULES AND IN CONTRAVENTION WITH THE NEW RULES OF PROCEDURE OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD; FURTHER, HIDING THE WRIT OF POSSESSION FROM PETITIONERS INSPITE OF REQUEST FOR A COPY ;

C. REFUSING TO TAKE ACTION ON PLEADINGS FILED BY PETITIONERS THRU COUNSEL AND FAILING AND REFUSING TO CONDUCT A HEARING AS PRAYED FOR BY COUNSEL; FAILING AND REFUSING TO FORWARD THE APPEAL TO THE PROPER APPELLATE BOARD;

D. UNWARRANTED INTERFERENCE IN LAWYER-CLIENT RELATIONSHIPS TO THE PREJUDICE OF PETITIONERS AND LAWYER; ABUSE OF AUTHORITY TO CITE COUNSEL FOR PETITIONER IN CONTEMPT AND ISSUING AN ORDER OF ARREST WITHOUT HEARING CONTRARY TO THE RULES OF COURT;

E. ATTY. MARCELINO JORNALES AND ATTY. PEDRO VEGA, INSPITE OF THEIR KNOWLEDGE OF THE

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[25] *Id.* at 147-151.

[26] *Id.* at 1-21.

ILLEGALLITY OF THE WRIT OF POSSESSION, PERSISTED AND ASSISTED IN THE ILLEGAL IMPLEMENTATION OF THE WRIT OF POSSESSION TO THE PREJUDICE OF LEGITIMATE FARMERS AND PETITIONERS[.][27]

Florin filed her Comment[28] stating, among others, that: (1) the writ of possession is anchored on the CLOA s issued by the Register of Deeds, and not on a final and executory decision that would require a certification of finality as prescribed by the DARAB rules; (2) Atty. Federico De Jesus (De Jesus), as Berenguers' counsel, was not furnished with a copy of the writ because it was not yet issued at the time when it was requested; (3) there was no intent to hide the writ; (4) when the writ of possession was finally signed, it was delivered to the sheriff for service and enforcement; (4) it was unfair to impute illegal acts against Vega and Jornales as DAR lawyers in view of the DAR's denial of the motion for a cease and desist order and because of the legal presumption of regularity in the performance of their duty; (5) the petitions for *certiorari* filed with the CA were both dismissed; and (6) the findings of DAR and the issuance of the CLOA s remain undisturbed. Florin also claimed that it is Atty. De Jesus who wants her disbarred and not the Berenguers.

In a separate Comment,[29] Vega denied the allegations against him arguing that: (1) the writ of possession is not illegal in the absence of a court order stating its invalidity; (2) he did not participate in the issuance of the writ of possession because he did not appear as the farmers' counsel; (3) the Legal Division he heads has no control or influence over the DARAB; and (4) his presence in the execution of the writ of possession was to ascertain that no violations against any law are committed by the person/s executing the writ.[30]

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[27] *Id.* at 2.

[28] *Id.* at 175-178.

[29] *Id.* at 253-256.

[30] *Id.* at 254.

Jornales' Comment,[31] for his part, stated that: (1) the writ has no *prima facie* infirmity; (2) he is not privy to the issuance thereof; (3) he has no supervision and control over the DAR which issued the writ; and (4) he has no authority to determine the writ's validity or invalidity. Jornales admitted, however, that he was in the meeting presided by the PNP Provincial Director of Sorsogon prior to the writ's implementation in his capacity as Regional Assistant Director for Operations of DAR Region V and not as a lawyer. He added that the disbarment complaint against him is not only malicious for lack of legal basis but is also meant to harass and intimidate DAR employees in implementing the CARP.[32]

After the complainants filed their Consolidated Reply,[33] the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

IBP Commissioner Milagros San Juan (Commissioner San Juan) recommended[34] that Florin be "[s]uspended from the practice of law for three (3) years for knowingly rendering an unjust judgment, Orders and Resolutions adverse and prejudicial to the interests of the Complainants." Commissioner San Juan, meanwhile, recommended that the charges against Jornales and Vega be dismissed for failure of the complainants to substantiate the charges against them.[35]

Commissioner San Juan's recommendation against Florin is based on the findings[36] of the CA in its Decision dated December 26, 2000 in CA-G.R. SP No. 53174,[37] which reads:

The Petition for *Certiorari* filed by the complainants before the Court of Appeals was treated as a petition for review and the court found the following errors:

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[31] *Id.* at 259-261.

[32] *Id.* at 259-260.

[33] *Id.* at 283-290.

[34] *Id.* at 327-340.

[35] *Id.* at 339-340.

[36] *Id.* at 337-339.

[37] *Id.* at 307-320.

"1) Respondent DAR Secretary has no jurisdiction over the subject properties being devoted to pasture and livestock and already classified as residential and industrial land, hence, outside the coverage of Republic Act 6657. (Comprehensive Agrarian Reform Law) The generation and issuance of Certificate of Landownership Award (CLOA) was therefore void;"

2) Being outside the coverage of CARL (Republic Act 6657), respondent Hon. Isabel E. Florin who is exercising delegated jurisdiction from the DARAB has no jurisdiction over Petitioners' Properties as held in *Krus na Ligas Farmer's Coop vs. University of the Philippines;* G.R. No. 107022[,] 8 December 1992[,] which is squarely in point with the case at bar."

A nent the issue regarding the qualified beneficiaries of the subject land, the Court ruled thus – "Assuming that the lands are indeed agricultural, we cannot understand why the DAR awarded them to members of respondent Baribag and not to the farmers in the area, in violation of Sec. 22 of the CARL x x x."

The court further stated – "We cannot xxx close this discussion without mentioning our observation on the actuations of Regional Agrarian Reform Adjudicator Isabel Florin. Just why she issued a writ of execution and eventually a Writ of Possession in favor of respondent Baribag puzzles us no end. She knew that Baribag is not a party in petitioners' application for exclusion filed with the Office of DAR Regional Director Percival Dalugdug. Obviously, she never acquired jurisdiction over Baribag. She also knew that petitioners appealed to the DAR Secretary from the Order of Regional Director Dalugdug dismissing petitioners' application for exclusion. Clearly, such order was not yet final and executory when she issued the assailed writs of execution and possession. Thus, the writ are [sic] void and would be set aside."[38]

On May 26, 2006, the IBP Board of Governors adopted Resolution No. XVII-2006-282 modifying the recommended penalty, *viz*:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and

[38] *Id.* at 337-339.

Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for knowingly rendering an unjust Judgment, Orders and Resolutions, adverse and prejudicial to the interest of the complainants, Atty. Isabel F. Florin is hereby **SUSPENDED** from the practice of law for one (1) year. The charges against Atty. Marcelino Jornales and Atty. Peter Vega are **DISMISSED** for failure of the complainants to substantiate the charges against Respondents.[39]

In her opposition,[40] Florin averred that: (1) jurisdiction was acquired over BARIBAG at the time it filed a petition for the implementation of the Order dated February 15, 1999; (2) the DARAB has jurisdiction to issue the CLOAs; (3) as RARAD, she has concurrent jurisdiction with DARAB; (4) the Berenguers were not denied due process; and (5) the Berenguers never questioned the regularity of the DAR's acquisition of their landholding nor did they file a petition for the cancellation of the CLOAs issued to BARIBAG.

This Court agrees with the findings of the IBP Board of Governors but modifies the penalty to be imposed.

Rule 138, Section 27 of the Rules of Court provides:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefore.*—A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilful disobedience appearing as an attorney for a party without authority so to do. x x x.

In *Lahm III v. Mayor, Jr.*,[41] the Court ruled that:

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[39] *Id.* at 325.

[40] *Id.* at 354-381.

[41] A.C. 7430, February 15, 2012, 666 SCRA 1.

A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor. Gross misconduct is any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose.[42] (Citations omitted)

In the instant case, the Berenguers want this Court to impose disciplinary sanction against the three (3) respondents as members of the bar. The grounds asserted by the complainants in support of the charges against the respondents, however, are intrinsically connected with the discharge of their quasi-judicial functions. Nevertheless, in *Atty. Vitriolo v. Atty. Dasig*,[43] the Court already ruled that if a misconduct as a government official also constitutes a violation of his oath as a lawyer, then a lawyer may be disciplined by this Court as a member of the Bar, viz:

> Generally speaking, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official. **However, if said misconduct as a government official also constitutes a violation of his oath as a lawyer, then he may be disciplined by this Court as a member of the Bar**.
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> x x x x x x x x x
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> **A member of the Bar who assumes public office does not shed his professional obligations. Hence, the Code of Professional Responsibility, promulgated on June 21, 1988, was not meant to govern the conduct of private practitioners alone, but of all lawyers including those in government service.** This is clear from Canon 6[44] of said Code. Lawyers in government are public servants who owe the utmost fidelity to the public service. Thus, they should be more

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[42] *Id.* at 9.

[43] 448 Phil. 199 (2003).

[44] CANON 6. — These Canons shall apply to lawyers in government service in the discharge of their official task.

sensitive in the performance of their professional obligations, as their conduct is subject to the ever-constant scrutiny of the public.

x x x For a lawyer in public office is expected not only to refrain from any act or omission which might tend to lessen the trust and confidence of the citizenry in government, she must also uphold the dignity of the legal profession at all times and observe a high standard of honesty and fair dealing. **Otherwise said, a lawyer in government service is a keeper of the public faith and is burdened with high degree of social responsibility, perhaps higher than her brethren in private practice**.[45] (Citations omitted and emphasis ours)

Thus, in *Tadlip v. Atty. Borres, Jr.*,[46] the Court ruled that an administrative case against a lawyer for acts committed in his capacity as provincial adjudicator of the DARAB may be likened to administrative cases against judges considering that he is part of the quasi-judicial system of our government.[47]

Similarly in this case, Florin, being part of the quasi-judicial system of our government, performs official functions of a RARAD that are akin to those of judges. Accordingly, the present controversy may be likened that of a judge whose decision, including the manner of rendition, is made subject of an administrative complaint.

Going now to the acts complained of, Section 29 of DAR Administrative Order No. 06-00 provides:

SEC. 29. *Effect of Appeal*.—Appeal to the Secretary, the Office of the President, or the Court of Appeals shall have the following effects:

(a) *Appeal from the Regional Director or Undersecretary to the Secretary*.— The appeal shall stay the order appealed from unless the Secretary directs execution pending appeal, as he may deem just, considering the nature and circumstances of the case (Executive Order No. 292 [1987], Book VII, Chapter 4, Sec. 21).

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[45] *Supra* note 43, at 207-209.

[46] 511 Phil. 56 (2005).

[47] *Id.* at 64.

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Based on the foregoing provision, the appeal of the Berenguers to the DAR Secretary clearly stayed the implementation of Regional Director Dalugdug's Order dated February 15, 1999. Moreover, it is the DAR Secretary who has jurisdiction to order execution pending appeal. Records reveal that there was no order by the DAR Secretary directing execution of the Order dated February 15, 1999 during the pendency of the Berenguers' appeal.

Corollarily, Rule 39 of the 1997 Rules of Court provides for the instances when execution may be had, namely: (1) after a decision or order has become final and executory;[48] (2) pending appeal, only upon good reasons to be stated in a special order after due hearing;[49] and (3) execution of several, separate or partial judgments.[50]

Moreover, Rule XX of the 2009 Rules of the DARAB reads:

Sec. 1. ***Execution Upon Final Order or Decision.—***Execution shall issue upon an order, resolution or decision that finally disposes of the action or proceeding. Such execution shall issue as a matter of course and upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

The Adjudicator concerned may, upon certification by the proper officer that a resolution, order or decision has been served to the counsel or representative on record and to the party himself, and has become final and executory, and, upon motion or *motu proprio*, issue a writ of execution ordering the DAR Sheriff or any DAR officer to enforce the same. In appropriate cases, the Board or any of its Members or its Adjudicator shall deputize and direct the Philippine National Police, Armed Forces of the Philippines or any of their component units or other law enforcement agencies in the enforcement of any final order, resolution or decision.

Sec. 2. ***Execution Pending Appeal.*** **—** A ny motion for execution of the decision of the Adjudicator pending appeal shall be filed before the Board which may grant the same upon meritorious grounds,

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[48] Section 1.

[49] Section 2 (a).

[50] Section 2 (b).

upon the posting of a sufficient bond in the amount conditioned for the payment of damages which the aggrieved party may suffer, in the event that the final order or decision is reversed on appeal, provided that the bond requirement shall not apply if the movant is a farmer- beneficiary/pauper litigant. (Emphasis ours)

In this case, the Order dated February 15, 1999 of DAR Regional Director Dalugdug denying the Berenguers' application for exclusion from CARP is yet to become final and executory as it was seasonably appealed to the DAR Secretary. There is also nothing in the records that will show whether BARIBAG posted a bond pursuant to the Rules.

While a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice,[51] the facts on hand prove otherwise. Florin's issuance of the writ of execution and writ of possession in order to fully implement Regional Director Dalugdug's Order dated February 15, 1999 clearly constitutes ignorance of the law for as a rule, a writ of execution is issued only after the subject judgment or order has already become final and executory.[52] As aptly stated by IBP Commissioner San Juan, Florin ordered the issuance of such writs despite the pendency of the appeal with the DARAB.[53] Consequently, the Court finds merit in the recommendation of suspension.

As to the penalty –

Judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do injustice will be administratively sanctioned.[54] In this case, it appears, however, that this is the first time that Florin has been made administratively liable. Although there is no showing that malice

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[51] *Dipatuan v. Mangotara*, A.M. No. RTJ-09-2190, April 23, 2010, 619 SCRA 48, 55.

[52] *Cabang v. Basay*, G.R. No. 180587, March 20, 2009, 582 SCRA 172, 182.

[53] *Rollo*, p. 339.

[54] *Atty. Claro v. Judge Efondo*, 494 Phil. 220, 228 (2005).

or bad faith attended the commission of the acts complained of, the same does not negate the fact that Florin executed an act that would cause an injustice to the Berenguers. To our mind, the act of issuing the writ of execution and writ of possession is not simply an honest error in judgment but an obstinate disregard of the applicable laws and jurisprudence.

With all these, the Court deems it reasonable to reconsider the penalty recommended and instead impose the penalty of suspension for three (3) months[55] without pay. As also held in *Rallos v. Judge Gako, Jr.*,[56] three (3) months suspension without pay was imposed against a judge after finding out that the ignorance of the law he committed was not tainted with bad faith.

With respect to the complaint against Jornales and Vega, the Court agrees and adopts the finding of the IBP that no sufficient evidence was adduced to substantiate the charges against them. Hence, the complaint against them should be dismissed.

WHEREFORE, in view of the foregoing, respondent ATTY. ISABEL E. FLORIN is found guilty of violating the Code of Professional Responsibility. Accordingly, she is penalized with SUSPENSION from the practice of law for three (3) months effective upon notice hereof. The complaint against Atty. Marcelino Jornales and Atty. Pedro Vega is **DISMISSED** for lack of sufficient evidence.

Let copies of this Decision be entered in her record as attorney and be furnished the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

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

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[55] *OSG v. De Castro*, A.M. No. RTJ-06-2018, October 15, 2007, 536 SCRA 29, 30-31.

[56] 398 Phil. 60 (2000).

SECOND DIVISION

[A.M. No. P-10-2791. April 17, 2013]
(Formerly A.M. No. 10-3-91-RTC)

JUDGE RENATO A. FUENTES, Regional Trial Court, Branch 17, Davao City, *complainant, vs.* **ATTY. ROGELIO F. FABRO, Branch Clerk of Court, and OFELIA SALAZAR,**[1] **Clerk III,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DELAY IN TRANSMITTING THE RECORDS OF APPEALED CASES CONSTITUTES SIMPLE NEGLECT OF DUTY.— Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their duties properly and with diligence at all times. The administration of justice is an inviolable task and it demands the highest degree of efficiency, dedication and professionalism. Salazar admitted neglecting her duty, giving as reason the "huge workload" in her office. Her explanation is no excuse. Salazar's neglect of her duties did not occur only once. She also neglected to transmit to the CA the records of Civil Case No. 29-019-2002. According to Judge Fuentes, there were other occasions when Salazar and Atty. Fabro failed to perform their duties, but remained unreported due to lack of any complainant. The Court is not unaware of the heavy workload of court personnel, given the number of cases filed and pending before it. However, unless proven to exist in an insurmountable degree, this circumstance cannot serve as an "excuse to evade administrative liability; otherwise, every government employee faced with negligence and dereliction of duty would resort to that excuse to evade punishment, to the detriment of the public service."

2. ID.; ID.; ID.; ID.; LENGTH OF SERVICE CONSIDERED TO MITIGATE CULPABILITY; FINE IMPOSED INSTEAD OF DISMISSAL.— In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the crime shall be considered.

[1] Impleaded as additional respondent.

The Court has mitigated imposable penalties for various special reasons. We have considered length of service in the judiciary, acknowledgement of infractions, remorse and family circumstances, among others, in determining the applicable penalty. In this case, while Salazar is a second time offender for simple neglect of duty, her long years of service in the judiciary and the admission of her negligence are circumstances to mitigate her culpability. Thus, instead of dismissal (the prescribed penalty for second time offenders), we find it proper to impose upon Salazar a fine of Forty Thousand Pesos (₱40,000.00).

D E C I S I O N

BRION, *J.*:

In a letter[2] dated July 17, 2009, addressed to the Office of the Court of Administrator (*OCA*), Judge Renato A. Fuentes of the Regional Trial Court, Branch 17, Davao City, reported that Atty. Rogelio F. Fabro, Branch Clerk of Court, and Ofelia Salazar, both of the same court, committed gross negligence of duty when thet failed to elevate to the Court of Appeals (*CA*), Cagayan de Oro City, the records of Civil Case No. 29,019-2002, entitled *Medardo E. Escarda, v. Celso E. Escarda, et al.*, within the prescribed period.[3] The records were forwarded to the CA only after more than two (2) years.[4]

In the same letter, Judge Fuentes mentioned that on May 19, 2009, he first reported the failure of Atty. Fabro and Salazar to transmit to the CA the records of Civil Case No. 29, 537-2003, entitled *Heirs of Teodoro Polinar, et al. v. Hon. Antonio O. Laotao, Sr., et al.* The records were forwarded to the CA only after more than six (6) years.

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[2] *Rollo*, pp. 20-21.

[3] See Section 10, Rule 41 of the Rules of Court.

[4] See the letter of Atty. Santos E. Torreña, Jr., counsel for Medardo E. Escarda, plaintiff in Civil Case No. 29,019-2002; *rollo*, p. 22.

CIVIL CASE NO. 29,537-2003
(*Heirs of Teodoro Polinar, et al.v. Hon. Antonio D. Laolao, Sr., et al.*)

It appears from the records that in a 1st Indorsement dated July 24, 2009[5], then Deputy Court Administrator Nimfa C. Vilches required Atty. fabro to comment on the may 19, 2009 report of Judge Fuentes. In his comment submitted on August 8, 2009, [6] Atty. Fabro denied knowledge that the records of Civil Case No. 29,537-2003 were not transmitted to the CA and put the blame on Salazar the personnel in charge of the records of civil cases. Salazar admitted that the records, already bundled and ready for transmittal to the CA, were filed and kept in the storeroom of old and archived cases, instead of being forwarded to the CA. Asked to explain by Judge Fuentes in a memorandum dated May 7, 2009,[7] Salazar explained that: (1) she had already prepared the records for transmittal to the CA, but they could have been unintentionally mishandled by others and placed in the files of archived and old cases; and (2) the huge workload in her office might have been the major reason why such unfortunate incident happened.

On November 6, 2009,[8] then Deputy Court Administrator Vilches wrote Atty. Fabro, absolving him of any culpability on the non-transmittal of the records of Civil Case No. 29,537-2003. The pertinent portion of the letter reads –

> After careful review, this Office finds the explanation to be well taken and the same is duly noted. You are hereby reminded to be more circumspect in the performance of your duty as Clerk of Court and in the supervision of your staff in RTC, Branch 17, Davao City in order to avoid the occurrence of similar incidents.[9]

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[5] *Id.* at 12.

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

[7] *Id.* at 16.

[8] *Id.* at 40.

[9] *Ibid*.

CIVIL CASE NO. 29,019-2002
(Medardo E. Escarda v. Celso E. Escarda, et al.)

Judge Fuentes reported that the records of Civil Case No. 29,019-2002 have not been transmitted to the CA for more than two (2) years. He approved the Notice of Appeal filed by defendants Celso E. Escarda, *et al.* on April 10, 2007 and directed Atty. Fabro to elevate the entire records of the case to the CA, Cagayan de Oro City. He further reported that "conformably to their previous notorious negligence and chronic blunders," Atty. Fabro and Salazar failed to perform their duties and functions, and committed serious dereliction of their duties and responsibilities, "but were not formally reported, for lack of formal complaint."[10]

Atty. Fabro and Salazar were required to comment on Judge Fuentes' letter-report. In his compliance[11] dated November 6, 2009, Atty. Fabro manifested that he is adopting his comment dated August 8, 2009 on the first letter-report of Judge Fuentes, and reiterated the grounds and reasons why and how the delay of transmitting the records of the cases happened.

The OCA recommended that: (1) the matter be formally docketed as an administrative complaint against Atty. Fabro, and (2) he be fined in the amount of Five Thousand Pesos (₱5,000.00) for the delay in transmitting the records of Civil Case No. 20,019-2002 and Civil Case No. 29,537-2003, with a warning that repetitions of the same or similar act in the future shall be dealt with more severely.

In a Decision[12] dated April 6, 2011, the Court found Atty. Fabro guilty of gross negligence of duty and was imposed a fine of ₱20,000.00, with a warning that a repetition of the same or similar act in the future shall be dealt with more severely. **The Court further directed the OCA to inform the Court of the action taken against Salazar.**

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[10] *Id.* at 20.

[11] *Id.* at 4-11.

[12] *Id.* at 50-54.

In compliance, the OCA submitted its Agenda Report recommending that Salazar be impleaded as respondent in the present complaint. The OCA found Salazar also guilty of negligence in the non-transmittal to the CA of the records of Civil Case No. 29,019-2002 and of Civil Case No. 29,537-2003. The OCA stressed, "[a]lthough the Rule delegates the responsibility of transmitting the records of an appealed case to the Court of Appeals, to the Clerk of Court, it cannot be denied that Salazar, who is in charge of the records of civil cases, is also remiss of her duty to assist Clerk of Court Fabro in forwarding the records of said case to the Court of Appeals, Cagayan de Oro City. Her failure to transmit the records of Civil Case No. 29,537-2003 to the Court of Appeals, Cagayan de Oro City constitutes negligence and warrants disciplinary action."[13]

The parties (Judge Fuentes and Salazar) were required to manifest whether they were willing to submit the case for decision on the basis of the pleadings/records filed and submitted.[14] Both submitted their compliance.[15]

Section 1, Canon 1V of the Code of Conduct for Court Personnel commands court personnel to perform their duties properly and with diligence at all times. The administration of justice is an inviolable task and it demands the highest degree of efficiency, dedication and professionalism. Salazar admitted neglecting her duty, giving as reason the "huge workload" in her office. Her explanation is no excuse. Salazar's neglect of her duty did not occur only once. She also neglected to transmit to the CA the records of Civil Case No. 29,019-2002. According to Judge Fuentes, there were other occasions when Salazar and Atty. Fabro failed to perform their duties, but remained unreported due to lack of any complainant.

The Court is not unaware of the heavy workload of court personnel, given the number of cases filed and pending before

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[13] *Id*. at 56.

[14] Resolution dated August 3, 2011; *id*. at 66.

[15] *Id*. at 67 and 69.

it. However, unless proven to exist in an insurmountable degree, this circumstance cannot serve as an "excuse to evade administrative liability; otherwise, every government employee faced with negligence and dereliction of duty would resort to that excuse to evade punishment, to the detriment of the public service."[16]

Clearly, Salazar is guilty of simple neglect of duty, which is defined as the failure to give proper attention to a task expected of an employee, thus signifying a disregard of a duty resulting from carelessness or indifference.[17] Under Section 52B (1) of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offence. It is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense.

In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the crime shall be considered.[18] The Court has mitigated imposable penalties for various special reasons. We have considered length of service in the judiciary, acknowledgement of infractions, remorse and family cimcumstances, among others, in determining the applicable penalty.[19] In this case, while Salazar is a second time offender for simple neglect of duty, her long years of service in the judiciary and the admission of her negligence are circumstances to mitigate her culpability. Thus, instead of dismissal (the prescribed penalty for second time

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[16] *Marquez v. Pablico.* A.M. No. P-06-2201, June 30, 2008, 556 SCRA 531, 537.

[17] *Contreras v. Monge*, A.M. No. P-06-2264, September 29, 2009, 601 SCRA 218, 224; and *Juario v. Labis*, A.M. No. P-07- 2388, June 30, 2008, 556 SCRA 540, 544.

[18] Uniform Rules on Admistrative cases in the Civil Service, Section 53.

[19] *Re: Habitual Absenteeism of Mr. Erwin A. Abdon, Utility Worker II*, A.M. No. 2007-13-SC, April 14, 2008, 551 SCRA 130, 134; and *Tan v. Sermonia*, A.M. No. P-08-2436, August 4, 2009, 595 SCRA 1, 11.

offenders), we find it proper to impose upon Salazar a fine of Forty Thousand Pesos (₱40,000.00).

WHEREFORE, the Court hereby finds respondent Ofelia Salazar, Clerk III, Regional Trial Court, Branch 17, Davao City, **GUILTY** of simple neglect of duty and imposes upon her the fine of Forty Thousand Pesos (₱40,000.00), with a **WARNING** that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perlas-Bernabe, and *Leonen,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 171555. April 17, 2013]

EVANGELINE RIVERA-CALINGASAN and E. RICAL ENTERPRISES, *petitioners, vs.* **WILFREDO RIVERA, substituted by MA. LYDIA S. RIVERA, FREIDA LEAH S. RIVERA and WILFREDO S. RIVERA, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT CASE; INVOLVES ONLY PHYSICAL POSSESSION.— "Ejectment cases - forcible entry and unlawful detainer - are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the

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[*] Designated as Additional Member in lieu of Associate Justice Jose Portugal Perez, per raffle dated April 17, 2013.

property involved. The only question that the courts resolve in ejectment proceedings is: who is entitled to the **physical possession** of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable." Thus, "an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property." Indeed, possession in ejectment cases "means nothing more than **actual physical possession**, not legal possession in the sense contemplated in civil law." In a forcible entry case, "**prior physical possession** is the primary consideration[.]" "A party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain on the property until a person with a better right lawfully ejects him." "[T]he party in peaceable, quiet possession shall not be thrown out by a strong hand, violence, or terror."

2. ID.; ID.; ID.; ID.; RESPONDENT'S PRIOR PHYSICAL POSSESSION, PROVEN; RESIDENCE IS A MANIFESTATION OF POSSESSION AND OCCUPATION.— [W]e are convinced that Wilfredo had been in prior possession of the property and that the petitioners deprived him of such possession by means of force, strategy and stealth. The CA did not err in equating residence with physical possession since residence is a manifestation of possession and occupation. Wilfredo had consistently alleged that he resided on "C.M. Recto Avenue, Lipa City, Batangas," the location of the property, whereas Evangeline has always admitted that she has been a resident of "J. Belen Street, Rosario, Batangas." The petitioners failed to prove that they have occupied the property through some other person, even if they have declared their residence in another area. We note that in another proceeding, a criminal complaint for qualified trespass to dwelling, the Lipa City Prosecutor also observed that the petitioners did not reside on or occupy the property on December 16, 2002, about three (3) months before Wilfredo filed the complaint for forcible entry on March 13, 2003. The petitioners also alleged therein that they are residents of "J. Belen St., Rosario, Batangas" and not "No. 30 C.M. Recto Ave., Lipa City[.]" Furthermore, the petitioners failed to rebut the affidavit of Barangay Captain

Briones attesting to Wilfredo's prior possession and the petitioners' unlawful entry to the property during Wilfredo's hospital confinement.

3. ID.; ID.; ID.; DEATH OF A PARTY DID NOT RENDER MOOT THE EJECTMENT CASE.— The death of Wilfredo introduces a seeming complication into the case and on the disposition we shall make. To go back to basics, the petition before us involves the recovery of possession of real property and is a real action that is not extinguished by the death of a party. The judgment in an ejectment case is conclusive between the parties and their successors-in-interest by title subsequent to the commencement of the action; hence, it is enforceable by or against the heirs of the deceased. This judgment entitles the winning party to: (a) the restitution of the premises, (b) the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, and (c) attorney's fees and costs.

4. ID.; ID.; ID.; ID.; WHERE THE BASIS OF POSSESSION IS USUFRUCTUARY RIGHT, THE ISSUE OF RESTITUTION OF POSSESSION HAS BEEN RENDERED MOOT UPON THE PARTY'S DEATH; EFFECT.— The complicating factor in the case is the nature and basis of Wilfredo's possession; he was holding the property as usufructuary, although this right to *de jure* possession was also disputed before his death, hand in hand with the *de facto* possession that is subject of the present case. Without need, however, of any further dispute or litigation, the right to the usufruct is now rendered moot by the death of Wilfredo since death extinguishes a usufruct under Article 603(1) of the Civil Code. This development deprives the heirs of the usufructuary the right to retain or to reacquire possession of the property even if the ejectment judgment directs its restitution.

5. ID.; ID.; ID.; ID.; ID.; AWARD OF DAMAGES BY WAY OF COMPENSATION SURVIVES AND ACCRUES TO THE HEIRS OF THE DECEASED.— [W]hat actually survives under the circumstances is the award of damages, by way of compensation, that the RTC originally awarded and which the CA and this Court affirmed. This award was computed as of the time of the

RTC decision (or roughly about a year before Wilfredo's death) but will now have to take into account the compensation due for the period between the RTC decision and Wilfredo's death. The computation is a matter of execution that is for the RTC, as court of origin, to undertake. The heirs of Wilfredo shall succeed to the computed total award under the rules of succession[.]

APPEARANCES OF COUNSEL

Jose Escano Calingasan for petitioners.
Mauricio Law Office for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*,[1] filed by petitioners Evangeline Rivera-Calingasan and E. Rical Enterprises,[2] assailing the February 10, 2006 decision[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 90717. The CA decision affirmed with modification the April 6, 2005 decision[4] and the July 8, 2005 order[5] of the Regional Trial Court (*RTC*) of Lipa City, Branch 85, in Civil Case No. 2003-0982.

The Factual Antecedents

During their lifetime, respondent Wilfredo Rivera and his wife, Loreto Inciong, acquired several parcels of land in Lipa City, Batangas, two of which were covered by Transfer

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-18.

[2] Evangeline is doing business under the tradename E. Rical Enterprises; CA *rollo*, p. 16.

[3] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), and concurred in by Associate Justices Renato C. Dacudao and Celia C. Librea-Leagogo; *rollo*, pp. 22-30.

[4] CA *rollo*, pp. 37-41. Penned by Judge Avelino G. Demetria.

[5] *Id.* at 35-36.

Certificate of Title (*TCT*) Nos. T-22290 and T-30557.[6] On July 29, 1982, Loreto died, leaving Wilfredo and their two daughters, Evangeline and Brigida Liza, as her surviving heirs.[7]

About eleven (11) years later, or on March 29, 1993, Loreto's heirs executed an extrajudicial settlement of her one-half share of the conjugal estate, adjudicating all the properties in favor of Evangeline and Brigida Liza; Wilfredo waived his rights to the properties, with a reservation of his usufructuary rights during his lifetime.[8] On September 23, 1993, the Register of Deeds of Lipa City, Batangas cancelled TCT Nos. T-22290 and T-30557 and issued TCT Nos. T-87494 and T-87495 in the names of Evangeline and Brigida Liza, with an annotation of Wilfredo's usufructuary rights.[9]

Almost a decade later, or on March 13, 2003,[10] Wilfredo filed with the Municipal Trial Court in Cities (*MTCC*) of Lipa City a complaint for forcible entry against the petitioners and Star Honda, Inc., docketed as Civil Case No. 0019-03.

Wilfredo claimed that he lawfully possessed and occupied the two (2) parcels of land located along C.M. Recto Avenue, Lipa City, Batangas, covered by TCT Nos. T-87494 and T-87495, with a building used for his furniture business. Taking advantage of his absence due to his hospital confinement in September 2002, the petitioners and Star Honda, Inc. took possession and caused the renovation of the building on the property. In December 2002, the petitioners and Star Honda, Inc., with the aid of armed men, barred him from entering the property.[11]

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[6] *Id.* at 42-45.

[7] *Id.* at 42.

[8] *Id.* at 44.

[9] *Id.* at 46-48.

[10] *Id.* at 19.

[11] *Id.* at 59-60.

Both the petitioners and Star Honda, Inc. countered that Wilfredo voluntarily renounced his usufructuary rights in a petition for cancellation of usufructuary rights dated March 4, 1996,[12] and that another action between the same parties is pending with the RTC of Lipa City, Branch 13 (an action for the annulment of the petition for cancellation of usufructuary rights filed by Wilfredo), docketed as Civil Case No. 99-0773.

The MTCC Ruling

In its December 2, 2003 decision,[13] the MTCC dismissed the complaint. It found no evidence of Wilfredo's prior possession and subsequent dispossession of the property. It noted that Wilfredo admitted that both E. Rical Enterprises and Star Honda, Inc. occupied the property through lease contracts from Evangeline and her husband Ferdinand.

Wilfredo appealed to the RTC.

The RTC Ruling

In its November 30, 2004 decision,[14] the RTC affirmed the MTCC's findings. It held that Wilfredo lacked a cause of action to evict the petitioners and Star Honda, Inc. since Evangeline is the registered owner of the property and Wilfredo had voluntarily renounced his usufructuary rights.

Wilfredo sought reconsideration of the RTC's decision and, in due course, attained this objective; the RTC set aside its original decision and entered another, which ordered the eviction of the petitioners and Star Honda, Inc.

In its April 6, 2005 decision,[15] the RTC held that Wilfredo's renunciation of his usufructuary rights could not be the basis of the complaint's dismissal since it is the subject of litigation pending with the RTC of Lipa City, Branch 13. The RTC found

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[12] *Id.* at 49.

[13] *Id.* at 59-65. Penned by Presiding Judge Jaime M. Borja.

[14] *Id.* at 70-71.

[15] *Supra* note 4.

that the MTCC overlooked the evidence proving Wilfredo's prior possession and subsequent dispossession of the property, namely: (a) Evangeline's judicial admission of "J. Belen Street, Rosario, Batangas" as her residence since May 2002; (b) the Lipa City Prosecutor's findings, in a criminal case for qualified trespass to dwelling, that the petitioners are not residents of the property; (c) the affidavit of Ricky Briones, Barangay Captain of Barangay 9, Lipa City where the property is located, attesting to Wilfredo's prior possession and the petitioners' entry to the property during Wilfredo's hospital confinement; and (d) the petitioners, with the aid of armed men, destroyed the padlock of the building on the property. The RTC ordered the petitioners and Star Honda, Inc. to pay ₱620,000.00 as reasonable compensation for the use and occupation of the property, and ₱20,000.00 as attorney's fees.

The petitioners and Star Honda, Inc. filed separate motions for reconsideration.

In its July 8, 2005 order,[16] the RTC modified its April 6, 2005 decision by absolving Star Honda, Inc. from any liability. It found no evidence that Star Honda, Inc. participated in the dispossession.

The petitioners then filed a Rule 42 petition for review with the CA.

The CA Ruling

In its February 10, 2006 decision,[17] the CA affirmed with modification the RTC's findings, noting that: (a) Evangeline's admission of "J. Belen Street, Rosario, Batangas" as her residence (a place different and distinct from the property) rendered improbable her claim of possession and occupation; and (b) Evangeline's entry to the property (on the pretext of repairing the building) during Wilfredo's hospital confinement had been done without Wilfredo's prior consent and was done through strategy and stealth. The CA, however, deleted the award of

[16] *Supra* note 5.

[17] *Supra* note 3.

₱20,000.00 as attorney's fees since the RTC decision did not contain any discussion or justification for the award.

The petitioners then filed the present petition.

Wilfredo died on December 27, 2006 and has been substituted by his second wife, Ma. Lydia S. Rivera, and their children, Freida Leah S. Rivera and Wilfredo S. Rivera, Jr. (respondents).[18]

The Petition

The petitioners submit that the CA erred in equating possession with residence since possession in forcible entry cases means physical possession without qualification as to the nature of possession, *i.e.*, whether residing or not in a particular place. They contend that the pronouncements of the RTC of Lipa City, Branch 13, in Civil Case No. 99-0773, in the March 11, 2003 order,[19] that they have been "occupying the premises since 1997"[20] and Wilfredo's own admission that he padlocked the doors of the building contradict Wilfredo's claim of prior possession.

The Case for the Respondents

The respondents counter that the petitioners mistakenly relied on the statements of the RTC of Lipa City, Branch 13, in Civil Case No. 99-0773 on the petitioners' occupation since 1997; such statements had been rendered in an interlocutory order, and should not prevail over Evangeline's admission in her answer of "Poblacion, Rosario, Batangas"[21] as her residence, compared to Wilfredo's admission in his complaint of "C.M. Recto Avenue, Lipa City, Batangas" as his residence, the exact address of the disputed property.[22]

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[18] *Rollo*, p. 85.

[19] CA *rollo*, pp. 68-69.

[20] *Rollo*, p. 14.

[21] *Id.* at 96.

[22] *Ibid.*

The Issue

The case presents to us the issue of who, between the petitioners and Wilfredo, had been in prior physical possession of the property.

Our Ruling

The petition lacks merit.

Ejectment cases involve only physical possession or possession *de facto*.

"Ejectment cases - forcible entry and unlawful detainer - are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved. The only question that the courts resolve in ejectment proceedings is: who is entitled to the **physical possession** of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable."[23] Thus, "an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property."[24]

Indeed, possession in ejectment cases "means nothing more than **actual physical possession**, not legal possession in the sense contemplated in civil law."[25] In a forcible entry case, "**prior physical possession** is the primary consideration[.]"[26] "A party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain

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[23] *Barrientos v. Rapal*, G.R. No. 169594, July 20, 2011, 654 SCRA 165, 170-171; emphasis ours, italics supplied. See also *David v. Cordova*, 502 Phil. 626, 645 (2005).

[24] *Carbonilla v. Abiera*, G.R. No. 177637, July 26, 2010, 625 SCRA 461, 469.

[25] *Antazo v. Doblada*, G.R. No. 178908, February 4, 2010, 611 SCRA 586, 592; and *Arbizo v. Santillan*, G.R. No. 171315, February 26, 2008, 546 SCRA 610, 622. Emphasis ours.

[26] *Antazo v. Doblada, supra,* at 593; emphasis ours.

on the property until a person with a better right lawfully ejects him."[27] "[T]he party in peaceable, quiet possession shall not be thrown out by a strong hand, violence, or terror."[28]

The respondents have proven prior physical possession of the property.

In this case, we are convinced that Wilfredo had been in prior possession of the property and that the petitioners deprived him of such possession by means of force, strategy and stealth.

The CA did not err in equating residence with physical possession since residence is a manifestation of possession and occupation. Wilfredo had consistently alleged that he resided on "C.M. Recto Avenue, Lipa City, Batangas," the location of the property, whereas Evangeline has always admitted that she has been a resident of "J. Belen Street, Rosario, Batangas." The petitioners failed to prove that they have occupied the property through some other person, even if they have declared their residence in another area.

We note that in another proceeding, a criminal complaint for qualified trespass to dwelling, the Lipa City Prosecutor also observed that the petitioners did not reside on or occupy the property on December 16, 2002,[29] about three (3) months before Wilfredo filed the complaint for forcible entry on March 13, 2003. The petitioners also alleged therein that they are residents of "J. Belen St., Rosario, Batangas" and not "No. 30 C.M. Recto Ave., Lipa City[.]"[30]

Furthermore, the petitioners failed to rebut the affidavit of *Barangay* Captain Briones attesting to Wilfredo's prior

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[27] *Ibid.* See also *Pajuyo v. Court of Appeals*, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 510-511.

[28] *Lee v. Dela Paz*, G.R. No. 183606, October 27, 2009, 604 SCRA 522, 542. See also *Quizon v. Juan*, G.R. No. 171442, June 17, 2008, 554 SCRA 601, 614.

[29] *Rollo*, pp. 47-50.

[30] *Id.* at 47 and 49.

possession and the petitioners' unlawful entry to the property during Wilfredo's hospital confinement.[31]

The petitioners' claim of physical possession cannot find support in the March 11, 2003 order[32] of the RTC of Lipa City, Branch 13, in Civil Case No. 99-0773 stating that the petitioners "have been occupying the premises since 1997." We note that the order was a **mere interlocutory order** on Wilfredo's motion for the issuance of a cease and desist order. An interlocutory order does not end the task of the court in adjudicating the parties' contentions and determining their rights and liabilities against each other. "[I]t is basically ***provisional*** in its application."[33] It is the nature of an interlocutory order that it is subject to modification or reversal that the result of further proceedings may warrant. Thus, the RTC's pronouncement on the petitioners' occupation "since 1997" is not *res judicata* on the issue of actual physical possession.

In sum, we find no reversible error in the decision appealed from and, therefore, affirm it.

Wilfredo's death did not render moot the forcible entry case.

The death of Wilfredo introduces a seeming complication into the case and on the disposition we shall make. To go back to basics, the petition before us involves the recovery of possession of real property and is a real action that is not extinguished by the death of a party. The judgment in an ejectment case is conclusive between the parties and their successors-in-interest by title subsequent to the commencement of the action; hence, it is enforceable by or against the heirs of the deceased. This judgment entitles the winning party to: (a) the restitution of the premises, (b) the sum justly due as arrears of rent or as

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

[32] *Supra* note 19.

[33] *Republic of the Philippines v. Sandiganbayan (Fourth Division), et al.*, G.R. No. 152375, December 13, 2011; and *Tomacruz-Lactao v. Espejo*, 478 Phil. 755, 763 (2004). Emphasis ours.

reasonable compensation for the use and occupation of the premises, and (c) attorney's fees and costs.

The complicating factor in the case is the nature and basis of Wilfredo's possession; he was holding the property as usufructuary, although this right to *de jure* possession was also disputed before his death, hand in hand with the *de facto* possession that is subject of the present case. Without need, however, of any further dispute or litigation, the right to the usufruct is now rendered moot by the death of Wilfredo since death extinguishes a usufruct under Article 603(1) of the Civil Code. This development deprives the heirs of the usufructuary the right to retain or to reacquire possession of the property even if the ejectment judgment directs its restitution.

Thus, what actually survives under the circumstances is the award of damages, by way of compensation, that the RTC originally awarded and which the CA and this Court affirmed. This award was computed as of the time of the RTC decision (or roughly about a year before Wilfredo's death) but will now have to take into account the compensation due for the period between the RTC decision and Wilfredo's death. The computation is a matter of execution that is for the RTC, as court of origin, to undertake. The heirs of Wilfredo shall succeed to the computed total award under the rules of succession, a matter that is not within the authority of this Court to determine at this point.

WHEREFORE, we hereby **DENY** the appeal and accordingly **AFFIRM** the February 10, 2006 decision of the Court of Appeals in CA-G.R. SP No. 90717 with the **MODIFICATION** that, with the termination, upon his death, of respondent Wilfredo Rivera's usufructuary over the disputed property, the issue of restitution of possession has been rendered moot and academic; on the other hand, the monetary award of ₱620,000.00, as reasonable compensation for the use and occupation of the property up to the time of the Regional Trial Court decision on April 6, 2005, survives and accrues to the estate of the deceased respondent Wilfredo Rivera, to be distributed to his heirs pursuant to the applicable law on succession. Additional compensation accrues and shall be added to the compensation from the time

of the Regional Trial Court decision up to respondent Wilfredo Rivera's death. For purposes of the computation of this additional amount and for the execution of the total amount due under this Decision, we hereby remand the case to the Regional Trial Court, as court of origin, for appropriate action. Costs against petitioners Evangeline Rivera-Calingasan and E. Rical Enterprises.

SO ORDERED.

Carpio (Chairperson), del Castillo, Perez, and *Perlas-Bernabe, JJ.,* concur.

SPECIAL SECOND DIVISION

[G.R. No. 179018. April 17, 2013]

PAGLAUM MANAGEMENT & DEVELOPMENT CORP. and HEALTH MARKETING TECHNOLOGIES, INC., *petitioners, vs.* **UNION BANK OF THE PHILIPPINES, NOTARY PUBLIC JOHN DOE, and REGISTER OF DEEDS of Cebu City and Cebu Province,** *respondents,*

J. KING & SONS CO., INC., *intervenor.*

SYLLABUS

1. REMEDIAL LAW; MOTION FOR RECONSIDERATION; ISSUES RAISED FOR THE FIRST TIME IN A MOTION FOR RECONSIDERATION BEFORE THIS COURT ARE DEEMED WAIVED.— Issues raised for the first time in a motion for reconsideration before this Court are deemed waived, because these should have been brought up at the first opportunity.

Nevertheless, there is no cogent reason to warrant a reconsideration or modification of our 18 June 2012 Decision.

2. ID.; ID.; NEW ISSUES THAT REQUIRE FACTUAL DETERMINATION ARE NOT WITHIN THE PROVINCE OF THIS COURT.— Union Bank raises three new issues that require a factual determination that is not within the province of this Court. These questions can be brought to and resolved by the RTC as it is the proper avenue in which to raise factual issues and to present evidence in support of these claims.

APPEARANCES OF COUNSEL

Franklin Delano M. Sacmar for petitioners.
Macalino and Associates for Union Bank.
Romeo C. Dela Cruz & Associates and *Macam Raro Ulep & Partners* for intervenor.

R E S O L U T I O N

SERENO, *C.J.*:

Union Bank filed this Motion for Reconsideration from our Decision[1] dated 18 June 2012. For the first time, it raises three new arguments. First, it states that the 11 December 1998 Restructuring Agreement is null and void, because the condition precedent – that the borrower should not be in default – was not complied with. Thus, the nullity of the agreement revived the Real Estate Mortgages, which have a different venue stipulation.[2] Second, assuming *arguendo* that the Restructuring Agreement is enforceable, it was only between HealthTech and Union Bank. PAGLAUM was a party only to the Real Estate Mortgages dated 11 February 1994 and 22 April 1998, and not to the Restructuring Agreement. Therefore, the venue insofar as it is concerned is exclusively in Cebu City pursuant to the venue stipulation in the mortgage contracts.[3] Third, the

[1] *Rollo*, pp. 412-421.

[2] *Id.* at 423-427.

[3] *Id.* at 427-429.

Complaint being an *accion reivindicatoria*, the assessed value of the real property as stated therein determines which court has exclusive jurisdiction over the case. Hence, as the Complaint does not show on its face the assessed value of the parcels of land, the Regional Trial Court's (RTC's) assumption of jurisdiction over the case was without basis.[4]

Union Bank also reiterates its argument in its Comment[5] that the Restructuring Agreement is entirely separate and distinct from the Real Estate Mortgages. Accordingly, since the Complaint relate exclusively to the mortgaged properties, the venue stipulation in the Real Estate Mortgages should apply.[6]

We deny the Motion for Reconsideration.

Issues raised for the first time in a motion for reconsideration before this Court are deemed waived, because these should have been brought up at the first opportunity.[7] Nevertheless, there is no cogent reason to warrant a reconsideration or modification of our 18 June 2012 Decision.

Union Bank raises three new issues that require a factual determination that is not within the province of this Court.[8] These questions can be brought to and resolved by the RTC as it is the proper avenue in which to raise factual issues and to present evidence in support of these claims.

Anent Union Bank's last contention, there is no need for the Court to discuss and revisit the issue, being a mere rehash of what we have already resolved in our Decision.

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[4] *Id.* at 429-431.

[5] *Id.* at 260-268.

[6] *Id.* at 431-436.

[7] *Ortigas and Company Ltd. v. Velasco,* 324 Phil. 483 (1996).

[8] *Republic v. Heirs of Julio Ramos,* G.R. No. 169481, 22 February 2010, 613 SCRA 314.

WHEREFORE, in view of the foregoing, we **DENY** the Motion for Reconsideration with **FINALITY.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 180514. April 17, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANTE L. DUMALAG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— It is an established rule that factual findings of the trial court, if supported by evidence on record, and particularly when affirmed by the appellate court, are binding on this Court, unless significant facts and circumstances were shown to have been overlooked or disregarded which, if considered, would have altered the outcome of the case. Moreover, questions as to credibility of a witness are matters best left to the appreciation of the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, which opportunity is denied to the reviewing tribunal. Accused-appellant herein failed to present any cogent reason to disturb the factual findings of the RTC and the Court of Appeals. The totality of the prosecution's evidence established a logical, vivid, and detailed account of the buy-bust operation which ultimately led to accused-appellant's arrest and the seizure of the plastic

sachets of *shabu* from his possession. The alleged inconsistencies in the prosecution witnesses' testimonies on the number and gender of the buy-bust team members are trivial and irrelevant for it does not involve any of the necessary elements for conviction of the accused-appellant for the illegal possession and sale of *shabu*.

2. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL POSSESSION AND ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug. In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.

3. ID.; ID.; ID.; ILLEGAL POSSESSION AND ILLEGAL SALE OF *SHABU*, PROVEN IN CASE AT BAR.— In this case, prosecution witnesses, PO3 Albano and PO2 Valdez, categorically stated under oath that as members of the buy-bust team, they caught accused-appellant *in flagrante delicto* selling and possessing *shabu*. The prosecution was able to establish that (a) accused-appellant had no authority to sell or to possess any dangerous drugs; (b) during the buy-bust operation conducted by the police on January 5, 2005 at the Sexy Beach Resort in Barangay Estancia, Pasuquin, Ilocos Norte, accused-appellant sold and delivered to PO3 Albano, acting as a poseur-buyer, for the price of Two Hundred Pesos (₱200.00), one heat-sealed plastic sachet containing 0.023 grams of white crystalline substance, chemically confirmed to be *shabu*; and (c) as a result of a search incidental to the valid warrantless arrest of accused-appellant, he was caught in possession of three more heat-sealed plastic sachets containing 0.01, 0.015, and 0.04 grams of white crystalline substance, all chemically confirmed also to be *shabu*. The two

marked One Hundred Peso (₱100.00) bills used as buy-bust money, as well as the aforementioned sachets of *shabu* were among the object evidence submitted by the prosecution to the RTC.

4. ID.; ID.; ID.; CHAIN OF CUSTODY OF THE SACHETS OF *SHABU* SEIZED FROM THE ACCUSED, DULY ESTABLISHED BY THE PROSECUTION.— [T]he Court finds that the chain of custody of the sachets of *shabu* seized from accused-appellant had been duly established by the prosecution, in compliance with Section 21 of Republic Act No. 9165. As pertinently summarized by the Court of Appeals, the prosecution had proven each and every link of the chain of custody of the sachets of *shabu* from the time they were seized from accused-appellant, kept in police custody then transferred to the laboratory for examination, and up to their presentation in court[.]

5. ID.; ID.; ID.; ID.; FAILURE OF THE POLICE OFFICER TO MARK THE ITEMS SEIZED FROM THE ACCUSED IMMEDIATELY UPON ITS CONFISCATION DOES NOT IMPAIR THE INTEGRITY OF THE CHAIN OF CUSTODY.— It has already been settled that the failure of police officers to mark the items seized from an accused in illegal drugs cases immediately upon its confiscation at the place of arrest does not automatically impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence. In *People v. Resurreccion,* the Court explained that "marking" of the seized items "immediately after seizure and confiscation" may be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of an accused in illegal drugs cases. It was further emphasized that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.

6. ID.; ID.; ID.; PENALTY FOR ILLEGAL POSSESSION AND ILLEGAL SALE OF *SHABU*.— Article II, Section 11 of Republic Act No. 9165 provides that the penalty for illegal possession of *shabu*, with a total weight of 0.065 grams, is 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). Applying the Indeterminate Sentence Law, the accused shall be sentenced to an

indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum term shall not be less than the minimum prescribed by the same. Thus, in Criminal Case No. 1683-19, the penalties imposed upon accused-appellant of imprisonment of twelve (12) years and one (1) day, as the minimum term, to fifteen (15) years, as the maximum term, and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00), are in order. The penalty for illegal sale of *shabu* (regardless of the quantity and purity involved), under Article II, Section 5 of Republic A ct No. 9165, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Consequently, the Court upholds the sentence imposed upon accused- appellant of life imprisonment and the order for him to pay a fine of Two Million Pesos (₱2,000,000.00) in Criminal Case No. 1684-19.

7. REMEDIAL LAW; EVIDENCE; NON-PRESENTATION OF THE INFORMANT IN ILLEGAL DRUGS CASES IS NOT ESSENTIAL FOR CONVICTION.— As for the non-presentation by the prosecution of the informant, this point need not be belabored. The Court has time and again held that "the presentation of an informant in an illegal drugs case is not essential for the conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative." The informant's testimony is not needed if the sale of the illegal drug has been adequately proven by the prosecution.

8. ID.; ID.; DEFENSE OF FRAME-UP; NOT SUFFICIENTLY ESTABLISHED.— [A]ccused-appellant's defense of frame-up was doubtful and uncorroborated. The defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Republic Act No. 9165. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence. In the instant case, accused-appellant failed to present, other than his own testimony, sufficient evidence to support his claims. Bolosan did not see and was not able to testify on the actual buy-bust operation, which took place inside accused-appellant's room at Sexy Beach Resort, as Bolosan only witnessed the events taking place from outside the resort.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Melver G. Tolentino for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For review is the Decision[1] dated July 3, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01847, which affirmed the Decision[2] dated November 16, 2005 of the Regional Trial Court (RTC), Branch 19, of Laoag City in Criminal Case Nos. 1683-19 and 1684-19, finding accused-appellant Dante L. Dumalag guilty beyond reasonable doubt of violating Article II, Sections 5 and 11 of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

The Informations against accused-appellant read:

Criminal Case No. 1683-19, for violation of Rep. Act No. 9165 (Possession)

That on or about 3:30 o'clock in the afternoon of January 5, 2005 at the Sexy Beach Resort located at Brgy. Estancia, Pasuquin, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, control and custody three (3) heat sealed plastic sachets weighing 0.01 grams, 0.015 grams, and 0.04 grams respectively (sic) for Methamphetamine Hydrochloride otherwise known as "*shabu*", without having the authority, license or prescription to do so.[3]

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[1] *Rollo*, pp. 56-98; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Ruben T. Reyes and Regalado E. Maambong, concurring.

[2] Records (Crim. Case No. 1683-19), pp. 89-100; penned by Assisting Judge Philip G. Salvador.

[3] *Id.* at 1-2.

Criminal Case No. 1684-19, for violation of Rep. Act No. 9165 (Sale)

That on or about 3:30 o'clock in the afternoon of January 5, 2005 at the Sexy Beach Resort located at Brgy. Estancia, Pasuquin, Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) small heat sealed plastic sachet containing Methamphetamine Hydrochloride otherwise known as *shabu*, a regulated drug, weighing 0.023 grams to a police poseur buyer in a buy bust operation without the necessary license or authority to do so.[4]

Accused-appellant pleaded not guilty to both charges when he was arraigned on June 14, 2005.[5]

During the preliminary conference on June 27, 2005, the parties made the following admissions:

The defense admitted the following proposals of the prosecution:

1. The identity of the accused as the same Dante Dumalag also known as Dato Dumalag who was arraigned in these cases.
2. That the accused is a resident of Brgy. 2, Pasuquin, Ilocos Norte on [or] before January 5, 2005.
3. That the accused was at the Sexy Beach [Resort] at Brgy. Estancia, Pasuquin, Ilocos Norte in the afternoon of January 5, 2005.
4. That the prosecution witnesses namely: PO3 Rousel Albano, PO2 Danny Valdez, SPO4 Angel Salvatierra and PO2 Harold Nicolas are members of the Special Operations Group (SOG) on or before January 5, 2005.
5. That the accused is not authorized to sell neither to possess prohibited drugs known as *shabu*.

For its part, the prosecution only admitted the proposal of the defense that the accused and PO2 Danny Valdez are town mates.[6]

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[4] Records (Crim. Case No. 1684-19), pp. 1-2.

[5] Records (Crim. Case No. 1683-19), p. 48.

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

The defense made additional admissions during pre-trial on June 28, 2005, which the RTC stated in its Order[7] of even date:

> Upon proposal of the Court, the defense admitted the existence of the initial laboratory report, the confirmatory report and the result of the urine test issued by Police Senior Inspector [PSI] Mary Ann Cayabyab [Cayabyab] which were marked as Exhibits "I", "J" and "K", respectively. The prosecution and the defense also agreed that before 2:00 o'clock in the afternoon of the date of the incident, the accused had rented and was occupying room number 3 of the Resort Hotel and Restaurant located at Sexy Beach, Pasuquin, Ilocos Norte.
>
> Thereafter, the prosecution and defense considered the pre-trial closed and terminated.

Thereafter, trial ensued.

The prosecution called Police Officer (PO) 3 Rousel Al Albano[8] (Albano) and PO2 Danny U. Valdez[9] (Valdez) to the witness stand, while dispensing with the testimony of Police Senior Inspector (PSI) Mary Ann Cayabyab (Cayabyab) in view of the stipulation of the parties as to the substance of her testimony.[10] The prosecution likewise submitted the following object and documentary evidence: (a) the Joint Affidavit[11] dated January 6, 2005 executed by the Special Operations Group (SOG) members who conducted the buy-bust operation on January 5, 2005, including PO3 Albano and PO2 Valdez; (b) the Extracted Police Blotters[12] dated January 6, 2005 which recorded the events prior to and after the buy-bust operation; (c) two pieces of ₱100.00 marked bills used in the buy-bust operation;[13]

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[7] *Id.* at 60.

[8] TSN, July 25, 2005.

[9] TSN, July 28, 2005.

[10] Records (Crim. Case No. 1683-19), p. 70.

[11] *Id.* at 3-4.

[12] *Id.* at 49-50.

[13] *Id.* at 14; Left in the custody of the RTC as noted by its Clerk of Court Ma. Victoria A. Acidera in her Index of Exhibits (CA *rollo*, pp. 7-8).

(d) the Request for Laboratory Examination[14] dated January 5, 2005 of one heat-sealed sachet marked "RA" and three heat-sealed sachets marked "R" of suspected *shabu* confiscated from accused-appellant; (e) Request for Drug Test Examination[15] dated January 5, 2005 of accused-appellant's person; (f) one heat-sealed sachet of suspected *shabu* marked "RA";[16] (g) three heat-sealed sachets of suspected *shabu* marked "R";[17] (h) PSI Cayabyab's Chemistry Report No. D-003-2005[18] dated January 5 and 6, 2005 stating that the sachets submitted for examination tested positive for methamphetamine hydrochloride; (i) PSI Cayabyab's Chemistry Report No. CDT-002-2005[19] dated January 6, 2005 stating that accused-appellant's urine sample tested positive for methamphetamine hydrochloride; (j) the Certification of Seized Items[20] dated January 5, 2005 prepared by PO3 Albano and PO2 Valdez enumerating the items seized from accused-appellant's possession when arrested; (k) several pieces of crumpled aluminum foils;[21] (l) a purple disposable lighter;[22] and (m) an empty Winston cigarette pack.[23]

The prosecution's version of events was presented by the RTC as follows:

At around 2:00 o'clock in the afternoon of January 5, 2005, a female police informant from Pasuquin, Ilocos Norte went to the office of the Special Operations Group (now Provincial Anti-Illegal Drugs Special Operations Team or PAID-SOT) located at Camp Juan, Laoag

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[14] *Id.* at 52.

[15] *Id.* at 51.

[16] *Supra* note 13.

[17] *Id.*

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

[19] *Id.* at 55.

[20] *Id.* at 56.

[21] *Supra* note 13.

[22] *Id.*

[23] *Id.*

City and reported that a certain Dato Dumalag, a known drug personality of Brgy. 2, Pasuquin, Ilocos Norte was at Sexy Beach Resort owned by Bebot Ferrer selling *shabu* to customers. Acting upon the report, PO3 Rousel Albano and PO2 Danny Valdez relayed the information to their team leader, Police Inspector Rolando Battulayan, who then organized a team composed of PO3 Albano, PO2 Valdez, SPO4 Salvatierra and PO2 Harold Nicolas to conduct a buy bust operation against the suspect. PO3 Albano was assigned to act as poseur buyer while the rest of the team will act as perimeter back up. PO3 Albano was also tasked to mark the two pieces of P100 bills provided by Inspector Battulayan to be used as buy bust money and placed the letter "R" between the letters G and P of Republika Ng Pilipinas on the face of the bills. The pre-operation activity was also recorded in the police blotter. Afterwards, the team proceeded to the target place located in Brgy. Estancia, Pasuquin at around 2:30 o'clock that same afternoon.

Upon reaching the place at around 3:00 o'clock, the police asked the caretaker of the beach resort if a person is occupying Room 03 as reported by the asset. The caretaker who was with another caretaker and both of whom were female gave them the information that indeed a male person was occupying the said room. After they prepared for the plan and have surveyed the area for five to seven minutes, they proceeded with the drug bust. The members of the back up security positioned themselves on the southern part of the alley about 15 meters away from Room 3 while PO3 Albano and the police asset went to the said room of the suspect which was located at northernmost part [of] the main building of the resort. When they were already at the door, the asset called out the name of the suspect Dato and PO3 Albano knocked at the door. After the asset also knocked at the door, a male person peeped through and upon recognizing the police asset, Dato Dumalag told her, "*Mano Alaenyo, sumrek kay pay lang ngarud*" (How much will you get, come in then). As they were already inside the room, PO3 Albano told the suspect, "*Balor dos ti alaenmi*" (We will get worth two). The suspect then went to the dresser located on the southern part of the room and west of the door and took one small plastic sachet and handed the same to PO3 Albano who immediately handed the two marked ₱100 bills. After the suspect had pocketed the money on his right front pocket, he told them, "*Rumaman kay pay ngarud tig-₱50.00* (Taste first, ₱50 worth for each of you). At that instance, PO3 Albano gave the pre-arranged signal to the members of the back up security that

the sale was already consummated by pressing the button of his cellphone to retrieve and call the last dialed number which was the cell number of PO2 Valdez. After making the signal, PO3 Albano grabbed the right hand of the suspect and informed him of his authority. The suspect scuffled with the police officer who was however able to subdue him.

In the meantime, after PO2 Valdez received the miss call of PO3 Albano, he and his companions rushed inside the room of the suspect. PO3 Albano had already handcuffed the suspect by then and was holding him at that time. While PO3 Albano frisked the accused where he confiscated a ₱50 bill in which three other sachets of suspected *shabu* were inserted, PO2 Valdez searched the room and confiscated some items which were on top of the dresser, such as five crumpled aluminum foil, stick of cigarette, cigarette foil, a lighter and a cellphone. Afterwards, they brought the suspect and the confiscated items to their headquarters in Laoag City where PO3 Albano marked the sachet of *shabu* bought from the suspect with his initials "RA". He also marked the other three sachets and the ₱50 bill in which he found the said sachets with the letter "R" on one side and the letters "DD" on the other side. He also prepared the confiscation receipt which the accused signed and the post operation report. On the other hand, PO2 Valdez marked the items that he confiscated with his initials "DUV". They then brought the confiscated items for laboratory examination together with a letter request.

Upon receipt of the specimens, the Forensic Chemical Officer of the Ilocos Norte Provincial Crime Laboratory Office in Camp Juan, Police Senior Inspector Mary Ann Cayabyab, examined the same. Particularly with respect to the four sachets, she found the contents thereof to be methamphetamine hydrochloride. This is shown in her Initial Laboratory Report as well as in her confirmatory report, Chemistry Report No. D-003-2005. The said Forensic Chemical Officer also found the urine sample of the accused positive for methamphetamine hydrochloride as shown in Chemistry Report No. CDT-002-005.

It must be noted that in the course of his testimony, PO3 Albano identified their Joint Affidavit of arrest, the extract of the police blotter showing the pre-operation activity; the extract of the police blotter containing the post operations report, the two pieces of ₱100 bills buy bust money bearing Serial Nos. *3664717 and PG656160, the three plastic confiscated from the possession of the accused with the

marking letter "R" and "DD", the ₱50 bill in which the three sachets were supposedly rolled, the plastic sachet containing crystalline substance that was sold by the suspect and the Certification of Seized Items. In the case of PO2 Valdez, he identified those that he confiscated: the five (5) pieces of crumpled aluminum foil, the Nokia 3210 cellphone, the Winston cigarette pack, a stick of Winston cigarette and a purple cigarette lighter. Both witnesses also identified the letter request for laboratory examination and the letter request for urine examination.[24] (Citations omitted.)

Evidence for the defense were the testimonies of accused-appellant himself[25] and Kaichel Bolosan[26] (Bolosan), and their respective Sworn Statements dated February 18, 2005.[27] The defense averred that the police officers framed accused-appellant after failing to extort money from him. The RTC summed up the defense's evidence, to wit:

That afternoon of January 5, 2005, Kaishel Bolosan was with his friends Nathaniel Bolosan, Mark Milan, Jay Adaon and Benjie Galiza singing at a videoke establishment located at the corner of the entrance of Sexy Beach. While the said group was there, Dante or Dato Dumalag whom Kaishel had known because he usually played billiards in his (accused's) house at Brgy. 2, Pasuquin but with whom he has not had any conversation before, passed by their place in a chop-chop motorcycle. Dante Dumalag was then with a female companion. As soon as Dante had parked his motorcycle, he and his female companion immediately went inside the hotel. This, Kaishel and his companions did not mind as they kept on singing. The caretaker and the cleaner of the hotel were there at that time when Dante Dumalag entered the hotel. Thirty (30) minutes after Dante and his female companion entered the hotel, six men arrived in a red pick up vehicle. Kaishel Bolosan knew them to be policemen because he recognized one of them to be Danny Valdez, a policeman who is a resident of Pasuquin and whom he usually saw in his uniform flagging down a ride in going to Laoag City, arrived in a red pick up vehicle. The

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[24] *Id.* at 90-93.

[25] TSN, September 14, 2005.

[26] TSN, August 24, 2005.

[27] Records (Crim. Case No. 1683-19), pp. 74-75 and 78-83.

police officers who were all male asked first the caretaker where the room of Dante Dumalag was and after looking for it for about five (5) minutes, Kaishel assumed that they entered the room of Dante because after they proceeded to the back, he did not see them anymore. Two of the police officers, however, remained at the side of the hotel, one of whom moved their pick up vehicle beside the hotel.

In the meantime, as Dante Dumalag and his companion Irish Sao were already in the hotel where they were supposed to rest, they rented a room, particularly Room No. 3. When they were already inside, Dante Dumalag went to the bathroom to take a bath while his lady companion [lay] on the bed. After taking a bath, Dante heard somebody knocked at the door. Only wearing a short pants as he just came from the bathroom, he went to open the door and as he did so, police officer Rousel Albano whose name he came to know the following day, pushed the door, entered the room and pointed his gun at him. At that time, Irish Sao was then in front of the mirror. Officer Albano supposedly let Dante turn his back and without identifying himself and without giving any reason why, he handcuffed the accused, made him lie on the bed face down, placed a pillow on his head, pointed his gun at him and frisked him but did not find any contraband. The accused was then made to stand up and it was at that instance that the two policemen (including Danny Valdez) who followed Rousel Albano inside the room let Irish Sao leave the room and without telling what they were looking for, searched the room. They took his cellphone and that was the time that the policemen also showed him two sachets of *shabu*. Dante Dumalag however did not know from where they produced the *shabu* because he was made to bow his head on the bed. After showing the *shabu*, Rousel Albano placed the barrel of his gun inside the mouth of Dante Dumalag but removed it when one of his companions told him that he might accidentally pull the trigger. Rousel Albano then told him that they will just talk so that there will be no case. Dante Dumalag understood this to mean that he has to settle the case by giving them money. When he did not accede, Rousel Albano allegedly boxed and pushed him on the stomach, causing him to stoop down. They then let him put [on] his sando and because he was in handcuffs, Nicomedes or Medy Lasaten, a detainee who was with the policemen at that time, helped him do so. The policemen then brought Dante Dumalag to the vehicle.

Before that, Kaishel Bolosan and his companions were still there at the video establishment. After the lapse of 15 minutes from the

time they entered the hotel, Kaishel saw the four policemen [re-appear] and just stood by and afterwards, one of them called him and his companions to board the chop chop motorcycle of the accused in their pick up and after complying with the order of the policemen, they were asked to leave. When they have already returned to the [videoke bar], that was the time that Kaishel saw Dante Dumalag brought out of the hotel by two policemen. Dante Dumalag was then boarded at the back of the pick up where he was sandwiched by three policemen while Danny Valdez was on the wheel and Irish Sao was at the passenger seat in front. The other two policemen rode at the back of the pick up. As the pick up left, it still stopped by the videoke bar where Danny Valde[z] in a threatening tone told Kaishel and his companions not to say anything and that they will arrest them all *shabu* users. At that time, Dante Dumalag did not see Kaishel because he was made to bow his head in his seat. When the pick up moved out of the place during which Kaishel allegedly saw Dante being boxed by one of the policemen, they first dropped by the house of Danny Valdez where they took something to cover the eyes of the accused, after which they proceeded to the camp.[28]

On November 16, 2005, the RTC promulgated its Decision finding accused-appellant guilty beyond reasonable doubt of the felonies charged and decreeing thus:

WHEREFORE, judgment is hereby rendered finding the accused Dante Dumalag GUILTY beyond reasonable doubt as charged in Criminal Case No. 1683[-19] for illegal possession of *shabu* aggregately weighing 0.065 gram and is therefore sentenced to suffer the indeterminate penalty of imprisonment ranging from TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS and to pay a fine of ₱400,000.00.

Said accused is likewise found GUILTY beyond reasonable doubt as charged of illegal sale of *shabu* in Criminal Case No. 1684[-19] and is therefore sentenced to suffer the penalty of life imprisonment and to pay the fine of ₱2,000,000.00.

The contraband subject of these cases are hereby confiscated, the same to be disposed of as the law prescribes.[29]

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

[29] *Id.* at 100.

In an Order[30] dated December 2, 2005, the RTC gave due course to accused-appellant's Notice of Appeal and directed that the records of his cases be forwarded to the Court of Appeals within the period prescribed by the rules. Accused-appellant was then transferred to and committed at the New Bilibid Prison on December 5, 2005, pending his appeal.[31]

Accused-appellant insisted that he is innocent and that the charges against him were merely fabricated. According to accused-appellant, the prosecution failed to establish the factual details which led to his arrest. Accused-appellant pointed out that he was consistent in stating that at the time he was arrested, he had a female companion with him, which was contrary to the police officers' self-serving testimonies that accused-appellant was alone when he was arrested; that the prosecution failed to impeach the credibility of Bolosan who testified that there were six men who arrived at the resort shortly before accused-appellant's arrest, thereby refuting the prosecution's claim that the buy-bust team was composed of only four male police officers, plus the female informant; and that there would have been no doubt as to the existence of the female informant had the prosecution presented her during the trial. Accused-appellant further argued that the police officers who arrested him and purportedly confiscated the sachets of *shabu* from his possession failed to strictly comply with the mandated procedure under Section 21 of Republic Act No. 9165. The said provision of the law and jurisprudence on the matter require that the marking of the drugs be done immediately after they are seized from the accused; otherwise, reasonable doubt arises as to the authenticity of the seized drugs. Accused-appellant claimed that the sachets of *shabu* supposedly seized from his possession were marked when he was already at the police station and not at the place of his arrest.

In its Decision dated July 3, 2007, the Court of Appeals affirmed *in toto* the RTC judgment of conviction.

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[30] *Id.* at 104.

[31] *Id.* at 105.

Thus, accused-appellant instituted this appeal[32] anchored on the following grounds:

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE PROSECUTION WAS ABLE TO PROVE THE GUILT OF THE APPELLANT BEYOND REASONABLE DOUBT CONSIDERING THAT:

1. THE TESTIMONIES OF THE PROSECUTION'S WITNESSES ARE REPLETE WITH SUBSTANTIAL OR SIGNIFICANT INCONSISTENCIES WHICH PROVE THAT NO BUY BUST OPERATION WAS CONDUCTED.

2. THE PROSECUTION FAILED TO COMPLY WITH THE PROCEDURES IN THE CUSTODY OF SEIZED PROHIBITED AND REGULATED DRUGS AS EMBODIED IN SECTION 21 OF REPUBLIC ACT 9165 WHICH RAISES DOUBT WHETHER THE *SHABU* PRESENTED IN COURT IS THE SAME FROM THE ONE ALLEGEDLY SEIZED FROM PETITIONER.[33]

The appeal is bereft of merit.

Accused-appellant challenges the credence and weight accorded by both the RTC and the Court of Appeals to the testimonies of the witnesses for the prosecution as opposed to those of the defense.

It is an established rule that factual findings of the trial court, if supported by evidence on record, and particularly when affirmed by the appellate court, are binding on this Court, unless significant facts and circumstances were shown to have been overlooked or disregarded which, if considered, would have altered the outcome of the case. Moreover, questions as to credibility of a witness are matters best left to the appreciation of the trial court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, which opportunity is denied to the reviewing tribunal.[34]

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[32] *Rollo*, pp. 10-54.

[33] *Id.* at 18.

[34] *People v. Go*, 406 Phil. 804, 815 (2001).

Accused-appellant herein failed to present any cogent reason to disturb the factual findings of the RTC and the Court of Appeals. The totality of the prosecution's evidence established a logical, vivid, and detailed account of the buy-bust operation which ultimately led to accused-appellant's arrest and the seizure of the plastic sachets of *shabu* from his possession. The alleged inconsistencies in the prosecution witnesses' testimonies on the number and gender of the buy-bust team members are trivial and irrelevant for it does not involve any of the necessary elements for conviction of the accused-appellant for the illegal possession and sale of *shabu*.

For a prosecution for illegal possession of a dangerous drug to prosper, it must be shown that (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely and consciously aware of being in possession of the drug.[35]

In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.[36]

In this case, prosecution witnesses, PO3 Albano and PO2 Valdez, categorically stated under oath that as members of the buy-bust team, they caught accused-appellant *in flagrante delicto* selling and possessing *shabu*. The prosecution was able to establish that (a) accused-appellant had no authority to sell or to possess any dangerous drugs; (b) during the buy-bust operation conducted by the police on January 5, 2005 at the Sexy Beach Resort in Barangay Estancia, Pasuquin, Ilocos Norte, accused-

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[35] *David v. People*, G.R. No. 181861, October 17, 2011, 659 SCRA 150, 157.

[36] *People v. Castro*, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 408.

appellant sold and delivered to PO3 Albano, acting as a poseur-buyer, for the price of Two Hundred Pesos (₱200.00), one heat-sealed plastic sachet containing 0.023 grams of white crystalline substance, chemically confirmed to be *shabu*; and (c) as a result of a search incidental to the valid warrantless arrest of accused-appellant, he was caught in possession of three more heat-sealed plastic sachets containing 0.01, 0.015, and 0.04 grams of white crystalline substance, all chemically confirmed also to be *shabu*. The two marked One Hundred Peso (₱100.00) bills used as buy-bust money, as well as the aforementioned sachets of *shabu* were among the object evidence submitted by the prosecution to the RTC.

As for the non-presentation by the prosecution of the informant, this point need not be belabored. The Court has time and again held that "the presentation of an informant in an illegal drugs case is not essential for the conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative."[37] The informant's testimony is not needed if the sale of the illegal drug has been adequately proven by the prosecution.[38]

In contrast, accused-appellant's defense of frame-up was doubtful and uncorroborated. The defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Republic Act No. 9165. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.[39] In the instant case, accused-appellant failed to present, other than his own testimony, sufficient evidence to support his claims. Bolosan did not see and was not able to testify on the actual buy-bust operation, which took place inside accused-appellant's room

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[37] *People v. Amansec*, G.R. No. 186131, December 14, 2011, 662 SCRA 574, 587.

[38] *Id.*

[39] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

at Sexy Beach Resort, as Bolosan only witnessed the events taking place from outside the resort.

Furthermore, the Court finds that the chain of custody of he sachets of *shabu* seized from accused-appellant had been duly established by the prosecution, in compliance with Section 21 of Republic Act No. 9165. As pertinently summarized by the Court of Appeals, the prosecution had proven each and every link of the chain of custody of the sachets of *shabu* from the time they were seized from accused-appellant, kept in police custody then transferred to the laboratory for examination, and up to their presentation in court, to wit:

> It has been established that: after the police officers reached appellant's room at the Sexy Beach Resort, and PO3 Albano acted as poseur-buyer, he was handed one (1) heat-sealed plastic sachet containing *shabu*. After accused was arrested, the police officers were able to retrieve from appellant's possession the marked money, as well as three (3) other heat-sealed plastic sachets containing *shabu*. They brought appellant to their office, together with the confiscated items, and prepared the necessary documents for the filing of the cases against him. PO3 Albano and PO2 Valdez signed the Certification of Seized Items (Exhibit "L") dated 05 January 2005. The team leader, Police Inspector Rolando Battulayan, prepared the Request for Laboratory Examination (Exhibit "E") dated 05 January 2005 of said heat-sealed plastic sachets containing alleged *shabu*, with the necessary markings on them, to determine if said items contain methamphetamine hydrochloride. The one (1) heat-sealed plastic sachet, subject of the illegal sale of dangerous drugs, was marked with letters "RA," while the three (3) heat-sealed plastic sachets, subject of the illegal possession of dangerous drugs, were marked with the letter "R" on one side and "DD" (initials of appellant), on the other side. PO3 Albano was the one who made said markings and delivered the same to the Ilocos Norte Provincial Crime Laboratory Office, Camp Capt. Valentin. Based on the Chemistry Report No. D-003-2005 (Initial Laboratory Report) dated 05 January 2005 (Exhibit "I") and Chemistry Report No. D-003-2005 (Exhibit "J") dated 06 January 2005 of Police Senior Inspector/Forensic Chemical Officer Mary Ann Nillo Cayabyab, the four (4) specimens (A, B1, B2 and B3), upon qualitative examination, tested positive for methamphetamine hydrochloride, a dangerous drug. Even appellant's urine sample tested positive for methamphetamine, as stated in

Chemistry Report No. CDT-002-2005 (Exhibit "K").[40] (Citations omitted.)

Accused-appellant's insistence that the police officers broke the chain of custody rule when they failed to mark the seized items immediately upon their confiscation at the place where he was apprehended lacks legal basis.

It has already been settled that the failure of police officers to mark the items seized from an accused in illegal drugs cases immediately upon its confiscation at the place of arrest does not automatically impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence.[41] In *People v. Resurreccion*,[42] the Court explained that "marking" of the seized items "immediately after seizure and confiscation" may be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of an accused in illegal drugs cases. It was further emphasized that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused. The Court elaborated in this wise:

> Jurisprudence tells us that the failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody.
>
> The failure to strictly comply with Sec. 21(1), Art. II of RA 9165 does not necessarily render an accused's arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as these would be utilized in the determination of the guilt or innocence of the accused.
>
> As we held in *People v. Cortez*, testimony about a perfect chain is not always the standard because it is almost always impossible to obtain an unbroken chain. Cognizant of this fact, the Implementing Rules and Regulations of RA 9165 on the handling and disposition of seized dangerous drugs provides as follows:

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[40] *Rollo*, p. 92.

[41] *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 826, 834.

[42] G.R. No. 186380, October 12, 2009, 603 SCRA 510, 520.

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 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 x x x.

Accused-appellant broaches the view that SA Isidoro's failure to mark the confiscated *shabu* immediately after seizure creates a reasonable doubt as to the drug's identity. ***People v. Sanchez,* however, explains that RA 9165 does not specify a time frame for "immediate marking," or where said marking should be done:**

> **What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items – to truly ensure**

that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) **in the presence of the apprehended violator** (2) **immediately upon confiscation.**

To be able to create a first link in the chain of custody, then, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. "Immediate confiscation" has no exact definition. Thus, in *People v. Gum-Oyen*, testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.[43] (Emphases supplied, citations omitted.)

There is no question herein that the confiscated sachets of *shabu* and related paraphernalia were inventoried and marked in the presence of accused-appellant at the police station where he was brought right after his arrest.

Finally, the penalties imposed by the RTC, as affirmed by the Court of Appeals, are correct.

Article II, Section 11 of Republic Act No. 9165 provides that the penalty for illegal possession of *shabu*, with a total weight of 0.065 grams, is 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). Applying the Indeterminate Sentence Law, the accused shall be sentenced to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by law and the minimum term shall not be less than the minimum prescribed by the same. Thus, in Criminal Case No. 1683-19, the penalties imposed upon accused-appellant of imprisonment of twelve (12) years and one (1) day, as the minimum term, to fifteen (15) years, as the maximum term, and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00), are in order.

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[43] *Id.* at 518-520.

The penalty for illegal sale of *shabu* (regardless of the quantity and purity involved), under Article II, Section 5 of Republic Act No. 9165, shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Consequently, the Court upholds the sentence imposed upon accused-appellant of life imprisonment and the order for him to pay a fine of Two Million Pesos (₱2,000,000.00) in Criminal Case No. 1684-19.

WHEREFORE, in view of all the foregoing, the appeal of accused-appellant Dante L. Dumalag is **DENIED** and the Decision dated July 3, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01847 is **AFFIRMED** *in toto*.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180843. April 17, 2013]

APOLONIO GARCIA, in substitution of his deceased mother, Modesta Garcia, and CRISTINA SALAMAT, *petitioners, vs.* **DOMINGA ROBLES *VDA. DE* CAPARAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DEAD MAN'S STATUTE RULE, APPLIED.— What the PARAD, DARAB and CA failed to consider and realize is that Amanda's declaration in her Affidavit covering Pedro's alleged admission and recognition of the alternate farming scheme is inadmissible for being a violation of the Dead Man's Statute, which provides that "[i]f one party

to the alleged transaction is precluded from testifying by death, insanity, or other mental disabilities, the other party is not entitled to the undue advantage of giving his own uncontradicted and unexplained account of the transaction." Thus, since Pedro is deceased, and Amanda's declaration which pertains to the leasehold agreement affects the 1996 "*Kasunduan sa Buwisan ng Lupa*" which she as assignor entered into with petitioners, and which is now the subject matter of the present case and claim against Pedro's surviving spouse and lawful successor-in-interest Dominga, such declaration cannot be admitted and used against the latter, who is placed in an unfair situation by reason of her being unable to contradict or disprove such declaration as a result of her husband-declarant Pedro's prior death.

2. LABOR AND SOCIAL LEGISLATION; THE CODE OF AGRARIAN REFORMS OF THE PHILIPPINES (R.A. 3844); THE LANDOWNER OR HER REPRESENTATIVE IS DUTY BOUND TO MAKE A CHOICE AS TO WHO WOULD SUCCEED TO THE LEASEHOLD UPON THE LESSEE'S DEATH IN ACCORDANCE WITH SECTION 9 OF R.A. 3844; EFFECTS OF FAILURE TO COMPLY.— Amanda, on the other hand, cannot claim that Pedro deceived her into believing that he is the sole successor to the leasehold. Part of her duties as the landowner's representative or administrator was to know the personal circumstances of the lessee Eugenio; more especially so, when Eugenio died. She was duty-bound to make an inquiry as to who survived Eugenio, in order that the landowner – or she as representative – could choose from among them who would succeed to the leasehold. Under Section 9 of RA 3844, Makapugay, or Amanda – as Makapugay's duly appointed representative or administrator – was required to make a choice, within one month from Eugenio's death, who would succeed as agricultural lessee. x x x Amanda may not claim ignorance of the [said] provision, as ignorance of the law excuses no one from compliance therewith. Thus, when she executed the 1979 Agricultural Leasehold Contract with Pedro, she is deemed to have chosen the latter as Eugenio's successor, and is presumed to have diligently performed her duties, as Makapugay's representative, in conducting an inquiry prior to making the choice.

3. ID.; ID.; ANY MODIFICATION TO THE LEASEHOLD AGREEMENT MUST BE MADE WITH THE CONSENT OF BOTH PARTIES AND MAY NOT PREJUDICE THE RIGHT OF THE LESSEE'S SUCCESSOR TO SECURITY OF TENURE.— [T]here is no other logical conclusion than that the 1996 "*Kasunduan sa Buwisan ng Lupa*" between Amanda and petitioners, which is grounded on Pedro's inadmissible verbal admission, and which agreement was entered into without obtaining Dominga's consent, constitutes an undue infringement of Dominga's rights as Pedro's successor-in-interest under Section 9, and operates to deprive her of such rights and dispossess her of the leasehold against her will. Under Section 7 of RA 3844, Dominga is entitled to security of tenure; and under Section 16, any modification of the lease agreement must be done with the consent of both parties and without prejudicing Dominga's security of tenure.

4. ID.; ID.; FAILURE TO INSIST A UNIQUE FARMING ARRANGEMENT WITH THE LESSEE RELATIVE TO THE LAND UNDER LEASEHOLD FOR 17 YEARS CONSTITUTES LACHES.— If petitioners earnestly believed that they had a right, under their supposed mutual agreement with Pedro, to cultivate the land under an alternate farming scheme, then they should have confronted Pedro or sought an audience with Amanda to discuss the possibility of their institution as co-lessees of the land; and they should have done so soon after the passing away of their father Eugenio. However, it was only in 1996, or 17 years after Pedro was installed as tenant in 1979 and long after his death in 1984, that they came forward to question Pedro's succession to the leasehold. As correctly held by the PARAD, petitioners slept on their rights, and are thus precluded from questioning Pedro's 1979 agricultural leasehold contract. x x x The same holds true for petitioners. They should be held to a faithful compliance with Section 9. If it is true that they entered into a unique arrangement with Pedro to alternately till the land, they were thus obliged to inform Makapugay or Amanda of their arrangement, so that in the process of choosing Eugenio's successor, they would not be left out. But evidently, they did not; they slept on their rights, and true enough, they were excluded, if there was any such alternate farming agreement between them. And after Pedro was chosen and installed as Eugenio's successor, they allowed 17 years to pass before

coming out to reveal this claimed alternate farming agreement and insist on the same.

APPEARANCES OF COUNSEL

Francisco T. Mamauag for petitioners.
V.P. Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Under the Dead Man's Statute Rule, "[i]f one party to the alleged transaction is precluded from testifying by death, insanity, or other mental disabilities, the other party is not entitled to the undue advantage of giving his own uncontradicted and unexplained account of the transaction."[1] Thus, the alleged admission of the deceased Pedro Caparas (Pedro) that he entered into a sharing of leasehold rights with the petitioners cannot be used as evidence against the herein respondent as the latter would be unable to contradict or disprove the same.

This Petition for Review on *Certiorari*[2] seeks to reverse and set aside the August 31, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 90403,[4] as well as its December 13, 2007 Resolution[5] denying petitioners' Motion for Reconsideration.

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[1] *Tan v. Court of Appeals*, G.R. No. 125861, September 9, 1998, 295 SCRA 247, 258.

[2] *Rollo*, pp. 9-25.

[3] *Id.* at 99-115; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S. E. Veloso.

[4] Entitled "*Modesto Garcia and Cristina Salamat, petitioners, versus The Department of Agrarian Reform Adjudication Board and Dominga Robles Vda. de Caparas, respondents*."

[5] *Rollo*, pp. 164-165.

Factual Antecedents

Flora Makapugay (Makapugay) is the owner of a 2.5-hectare farm in Barangay Lugam, Malolos, Bulacan (the land) covered by Transfer Certificate of Title No. (TCT) RT-65932 (T-25198)[6] and being tilled by Eugenio Caparas (Eugenio) as agricultural lessee under a leasehold agreement. Makapugay passed away and was succeeded by her nephews and niece, namely Amanda dela Paz-Perlas (Amanda), Justo dela Paz (Justo) and Augusto dela Paz (Augusto). On the other hand, Eugenio's children – Modesta Garcia (Garcia), Cristina Salamat (Salamat) and Pedro – succeeded him.

Before she passed away, Makapugay appointed Amanda as her attorney-in-fact. After Eugenio died, or in 1974, Amanda and Pedro entered into an agreement entitled "*Kasunduan sa Buwisan*",[7] followed by an April 19, 1979 Agricultural Leasehold Contract,[8] covering the land. In said agreements, Pedro was installed and recognized as the lone agricultural lessee and cultivator of the land.

Pedro passed away in 1984, and his wife, herein respondent Dominga Robles *Vda. de* Caparas (Dominga), took over as agricultural lessee.

On July 10, 1996, the landowners Amanda, Justo and Augusto, on the one hand, and Pedro's sisters Garcia and Salamat on the other, entered into a "*Kasunduan sa Buwisan ng Lupa*"[9] whereby Garcia and Salamat were acknowledged as Pedro's co-lessees.

On October 24, 1996, herein petitioners Garcia and Salamat filed a Complaint[10] for nullification of leasehold and restoration of rights as agricultural lessees against Pedro's heirs, represented

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[6] Or TCT RT-65932.

[7] *Rollo*, p. 67.

[8] *Id.* at 32-33.

[9] *Id.* at 35-36, 125-126.

[10] *Id.* at 27-31.

by his surviving spouse and herein respondent Dominga. Before the office of the Provincial Agrarian Reform Adjudicator (PARAD) of Bulacan, the case was docketed as Department of Agrarian Reform Adjudication Board (DARAB) Case No. R-03-02-3520-96.

In their Complaint, Garcia and Salamat claimed that when their father Eugenio died, they entered into an agreement with their brother Pedro that they would alternately farm the land on a "per-season basis"; that the landowner Makapugay knew of this agreement; that when Makapugay passed away, Pedro reneged on their agreement and cultivated the land all by himself, deliberately excluding them and misrepresenting to Amanda that he is Eugenio's sole heir; that as a result, Amanda was deceived into installing him as sole agricultural lessee in their 1979 Agricultural Leasehold Contract; that when Amanda learned of Pedro's misrepresentations, she executed on July 10, 1996 an Affidavit[11] stating among others that Pedro assured her that he would not deprive Garcia and Salamat of their "cultivatory rights"; that in order to correct matters, Amanda, Justo and Augusto executed in their favor the 1996 "*Kasunduan sa Buwisan ng Lupa*", recognizing them as Pedro's co-lessees; that when Pedro passed away, Dominga took over the land and, despite demands, continued to deprive them of their rights as co-lessees; that efforts to settle their controversy proved futile, prompting the *Barangay* Agrarian Reform Committee to issue the proper certification authorizing the filing of a case; and that they suffered damages as a consequence. Petitioners prayed that the 1979 Agricultural Leasehold Contract between Pedro and Amanda be nullified; that they be recognized as co-lessees and allowed to cultivate the land on an alternate basis as originally agreed; and that they be awarded ₱50,000.00 attorney's fees and costs of litigation.

In her Answer,[12] herein respondent Dominga claimed that when her father-in-law Eugenio died, only her husband Pedro

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[11] *Id.* at 34.

[12] *Id.* at 38-43.

succeeded and cultivated the land, and that petitioners never assisted him in farming the land; that Pedro is the sole agricultural lessee of the land; that Amanda's July 10, 1996 Affidavit and "*Kasunduan sa Buwisan ng Lupa*" of even date between her and the petitioners are self-serving and violate the existing 1979 Agricultural Leasehold Contract; that under Section 38[13] of Republic Act No. 3844[14] (RA 3844), petitioners' cause of action has prescribed. Dominga further claimed that Pedro has been in possession of the land even while Eugenio lived; that petitioners have never cultivated nor possessed the land even for a single cropping; that Pedro has been the one paying the lease rentals as evidenced by receipts; that when Pedro died in 1984, she succeeded in his rights as lessee by operation of law, and that she had been remitting lease rentals to the landowners since 1985; and that petitioners had no right to institute themselves as her co-lessees. She prayed that the Complaint be dismissed; that the July 10, 1996 "*Kasunduan sa Buwisan ng Lupa*" be nullified; that the execution of a new leasehold agreement between her and the landowners be ordered; and by way of counterclaim, that moral damages[15] and litigation costs be awarded her.

Ruling of the PARAD

After hearing and consideration of the parties' respective position papers and other submissions, the PARAD issued on May 4, 1998 a Decision,[16] which decreed as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendant and against the plaintiffs and Order is hereby issued:

1. ORDERING the dismissal of the case;

2. DECLARING defendant Dominga Robles *Vda. de* Caparas as lawful successor-tenant;

[13] Section 38. Statute of Limitations - An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued.

[14] THE CODE OF AGRARIAN REFORMS OF THE PHILIPPINES, as amended.

[15] Without specifying the amount.

[16] *Rollo*, pp. 44-50; penned by Provincial Adjudicator Gregorio D. Sapera.

3. ORDERING plaintiffs to maintain defendant in her peaceful possession and cultivation of the subject landholding;

4. ORDERING the MARO of Malolos, Bulacan to execute a new leasehold contract between the landowner and defendant Dominga Robles *Vda. de* Caparas;

5.No pronouncement as to costs.

SO ORDERED.[17]

The PARAD held that Amanda's act of executing the July 10, 1996 Affidavit and "*Kasunduan sa Buwisan ng Lupa*" amounted to dispossession of Pedro's landholding and rights without cause; that Amanda's 1996 disclaimer, after having installed Pedro as tenant in 1979, was belated and unjustified; that petitioners have not shown by evidence that they actually cultivated the land, or that they paid rentals to the landowners; that petitioners' cause of action has prescribed in accordance with Section 38 of RA 3844; that for failure to timely question Pedro's leasehold, his rights were transferred, by operation of law, to Dominga upon his death. Finally, the PARAD held that petitioners' July 10, 1996 "*Kasunduan sa Buwisan ng Lupa*" is null and void for being issued against Pedro's existing 1979 Agricultural Leasehold Contract, which has not been cancelled by competent authority.

DARAB Case No. 03-03-10307-99

It appears that sometime after the execution of the July 10, 1996 "*Kasunduan sa Buwisan ng Lupa*" and during the pendency of DARAB Case No. R-03-02-3520-96, petitioners entered the land and began tilling the same. For this reason, Dominga filed DARAB Case No. 03-03-10307-99, for maintenance of peaceful possession with injunctive relief, against the landowners and petitioners. On petitioners' motion, the case was dismissed.[18]

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[17] *Id.* at 49-50. Emphases in the original.

[18] *Id.* at 56-59; Order dated March 27, 2001 penned by Regional Adjudicator Fe Arche Manalang.

Ruling of the DARAB

Petitioners appealed the May 4, 1998 PARAD Decision in DARAB Case No. R-03-02-3520-96 to the DARAB, where the case was docketed as DARAB Case No. 9722[19] (DCN 9722). Dominga likewise appealed the dismissal of DARAB Case No. 03-03-10307-99, which appeal was docketed as DARAB Case No. 11155 (DCN 11155). On motion, both appeals were consolidated.

On June 15, 2005, the DARAB issued its Decision,[20] the dispositive portion of which reads, as follows:

WHEREFORE, premises considered, a new judgment is hereby rendered:

1. DECLARING Dominga Robles *Vda. de* Caparas as the lawful successor-tenant of Pedro Caparas over the subject landholding;

2. ORDERING the plaintiffs in DCN 9722 and the respondents in DCN 11155 or any person acting in their behalves [sic], to maintain Dominga Robles *Vda. de* Caparas in peaceful possession and cultivation of the subject landholding;

3. ORDERING the MARO of Malolos, Bulacan, to execute a new leasehold contract between the landowner and Dominga Robles *Vda. de* Caparas; and

4. ORDERING for the dismissal of DCN 11155 for being moot and academic.

SO ORDERED.[21]

In upholding the PARAD Decision, the DARAB held that contrary to petitioners' claim, there was no alternate farming agreement between the parties, and thus petitioners may not claim that they were co-lessees; that Pedro merely shared his harvest with petitioners as an act of generosity, and Dominga's

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[19] Alternately referred to as "DCN 9772" by the DARAB.

[20] *Rollo*, pp. 60-74; penned by Assistant Secretary Edgar A. Igano and concurred in by Assistant Secretaries Lorenzo R. Reyes, Augusto P. Quijano and Delfin B. Samson.

[21] *Id.* at 72-73. Emphases in the original.

act of stopping this practice after succeeding Pedro prompted petitioners to file DARAB Case No. R-03-02-3520-96 and claim the status of co-lessees; that Amanda's Affidavit and the 1996 "*Kasunduan sa Buwisan ng Lupa*" between the landowners and petitioners cannot defeat Pedro's 1979 Agricultural Leasehold Contract and his rights as the sole tenant over the land; that for sleeping on their rights, petitioners are now barred by laches from claiming that they are co-lessees; and that petitioners' 1996 "*Kasunduan sa Buwisan ng Lupa*" is null and void for being contrary to law, morals, public policy, and Pedro's 1979 Agricultural Leasehold Contract, which was subsisting and which has not been cancelled by competent authority.

Ruling of the Court of Appeals

Petitioners filed before the CA a Petition for *Certiorari*, which was docketed as CA-G.R. SP No. 90403, seeking to set aside the DARAB Decision. The sole basis of their Petition rests on the argument that as a result of a May 9, 2005 Order issued by the Regional Technical Director (Region III) of the Department of Environment and Natural Resources, the survey returns and plans covering TCT RT-65932 have been cancelled, which thus rendered the June 15, 2005 DARAB Decision null and void and a proper subject of *certiorari*.

On August 31, 2007, the CA issued the assailed Decision which decreed as follows:

IN LIGHT OF ALL THE FOREGOING, the instant petition is **DENIED**. The assailed decision is **AFFIRMED *in toto***.

SO ORDERED.[22]

The CA held that the issue raised by petitioners – the cancellation of the survey returns and plans covering TCT RT-65932 – was not part of their causes of action in the PARAD or DARAB, and this new issue changed the theory of their case against Dominga, which is not allowed. The CA added that it could not decide the case on the basis of a question which was not placed in issue during the proceedings below.

[22] *Id.* at 114-115. Emphases in the original.

The CA held further that even granting that the issues are resolved on the merits, the petition would fail; the cancellation of the survey returns and plans covering TCT RT-65932 reverts the property to its original classification as agricultural land which thus vindicates the leasehold agreements of the parties. And speaking of leasehold agreements, the CA held that petitioners may not be considered as Pedro's co-lessees, for lack of proof that they actually tilled the land and with petitioners' own admission in their pleadings that they merely received a share from Pedro's harvests; that the original 1974 and 1979 leasehold agreements between Makapugay, Amanda and Pedro categorically show that Pedro is the sole designated agricultural lessee; and that without proper legal termination of Pedro's lease in accordance with RA 3844, the landowners cannot designate other tenants to the same land in violation of the existing lessee's rights.

Petitioners moved for reconsideration, arguing that the land has been re-classified as residential land, and has been actually used as such. Petitioners cited a 1997 ordinance, Malolos Municipal Resolution No. 41-97,[23] which adopted and approved the zoning ordinance and the Malolos Development Plan prepared jointly by the Housing and Land Use Regulatory Board and the Malolos *Sangguniang Bayan*. In the assailed December 13, 2007 Resolution,[24] the CA denied the Motion for Reconsideration.

Issues

In this petition, the following errors are assigned:

1. x x x RESPONDENT'S ACT OF HAVING BUILT THREE (3) HOUSES (FOR HERSELF AND TWO OF HER CHILDREN), WAS "CONVERSION OF THE FARMHOLD INTO A HOUSING-RESIDENTIAL SUBDIVISION" AND THEREFORE, SHE IS NOT BEING PUT IN SURPRISE NOR IN UNFAIR SITUATION. CONSEQUENTLY, SHE IS THE PARTY IN ESTOPPEL.

[23] *Id.* at 127-129.

[24] *Id.* at 164-165.

AND FROM THE TIME BY HER ACTS OF SELF-CONVERSION OF THE LAND, IN THE EARLY '90S OR EARLIER, SHE "LOST HER SECURITY OF TENURE" AS AGRICULTURAL LESSEE.

2. THE DECISIONS OF THE DARAB PROVINCIAL ADJUDICATOR, DARAB CENTRAL OFFICE, AND THE HONORABLE COURT OF APPEALS, SPEAK OF NO HOMELOT HAVING BEEN AWARDED BY THE DEPARTMENT OF AGRARIAN REFORM TO PRIVATE RESPONDENT.

3. ACTUAL PHYSICAL CHANGE IN THE USE OF THE LAND FROM AGRICULTURAL TO "RESIDENTIAL" MAY OCCUR AFTER TRIAL, BUT DURING THE APPEAL, WHICH THE HON. COURT OF APPEALS MAY CONSIDER.

4. "CONVERSION" (WHICH REQUIRES PRIOR APPROVAL BY THE DAR) HAVING BECOME A "*FAIT ACCOMPLI*", SECTION 220 OF THE REAL ESTATE TAX CODE AND ARTICLE 217 OF THE LOCAL GOVERNMENT CODE OF 1991 AFFIRM THE TRUSTWORTHINESS OF THE TAX DECLARATION THAT IS, THE PREVIOUS FARMHOLD HAS BEEN CONVERTED INTO "RESIDENTIAL" LAND, AND CONFIRMED BY THE CITY ZONING DIRECTOR.

5. IN NOT HAVING CONSIDERED THE TAX DECLARATION AND THE ZONING CERTIFICATION x x x, THE HON. COURT OF APPEALS COMMITTED A VERY FUNDAMENTAL ERROR.[25]

Petitioners' Arguments

In their Petition and Reply,[26] petitioners this time argue that in building houses upon the land for herself and her children without a homelot award from the Department of Agrarian Reform, Dominga converted the same to residential use; and by this act of conversion, Dominga violated her own security of tenure and the land was removed from coverage of the land reform laws. They add that the Malolos zoning ordinance and the tax declaration covering the land effectively converted the property into residential land.

Petitioners justify their change of theory, the addition of new issues, and the raising of factual issues, stating that the resolution

[25] *Id.* at 16-17. Capitalization supplied.

[26] *Id.* at 177-188.

of these issues are necessary in order to arrive at a just decision and resolution of the case in its totality. They add that the new issues were raised as a necessary consequence of supervening events which took place after the Decisions of the PARAD and DARAB were issued.

Respondent's Arguments

In her Comment,[27] Dominga argues that the Petition raises questions of fact which are not the proper subject of a Petition under Rule 45 of the Rules. She adds that petitioners raised anew issues which further changed the theory of their case, and which issues may not be raised for the first time at this stage of the proceedings.

Our Ruling

The Petition is denied.

DARAB Case No. R-03-02-3520-96, which was filed in 1996 or long after Pedro's death in 1984, has no leg to stand on other than Amanda's declaration in her July 10, 1996 Affidavit that Pedro falsely represented to Makapugay and to her that he is the actual cultivator of the land, and that when she confronted him about this and the alleged alternate farming scheme between him and petitioners, Pedro allegedly told her that "he and his two sisters had an understanding about it and he did not have the intention of depriving them of their cultivatory rights."[28] Petitioners have no other evidence, other than such verbal declaration, which proves the existence of such arrangement. No written memorandum of such agreement exists, nor have they shown that they actually cultivated the land even if only for one cropping. No receipt evidencing payment to the landowners of the latter's share, or any other documentary evidence, has been put forward.

What the PARAD, DARAB and CA failed to consider and realize is that Amanda's declaration in her Affidavit covering

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[27] *Id.* at 172-175.

[28] *Id.* at 34.

Pedro's alleged admission and recognition of the alternate farming scheme is inadmissible for being a violation of the Dead Man's Statute,[29] which provides that "[i]f one party to the alleged transaction is precluded from testifying by death, insanity, or other mental disabilities, the other party is not entitled to the undue advantage of giving his own uncontradicted and unexplained account of the transaction."[30] Thus, since Pedro is deceased, and Amanda's declaration which pertains to the leasehold agreement affects the 1996 "*Kasunduan sa Buwisan ng Lupa*" which she as assignor entered into with petitioners, and which is now the subject matter of the present case and claim against Pedro's surviving spouse and lawful successor-in-interest Dominga, such declaration cannot be admitted and used against the latter, who is placed in an unfair situation by reason of her being unable to contradict or disprove such declaration as a result of her husband-declarant Pedro's prior death.

If petitioners earnestly believed that they had a right, under their supposed mutual agreement with Pedro, to cultivate the land under an alternate farming scheme, then they should have confronted Pedro or sought an audience with Amanda to discuss the possibility of their institution as co-lessees of the land; and they should have done so soon after the passing away of their father Eugenio. However, it was only in 1996, or 17 years after Pedro was installed as tenant in 1979 and long after his death in 1984, that they came forward to question Pedro's succession to the leasehold. As correctly held by the PARAD,

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[29] RULES OF COURT, Rule 130, Section 23 provides that:

SEC. 23. ***Disqualification by reason of death*** *or insanity of adverse party*. – Parties or **assignors of parties to a case**, or persons in whose behalf a case is prosecuted, **against an executor or administrator or other representative of a deceased person**, or against a person of unsound mind, **upon a claim or demand against the estate of such deceased person** or against such person of unsound mind, **cannot testify as to any matter of fact occurring before the death of such deceased person** or before such person became of unsound mind. (Emphasis supplied)

[30] *Tan v. Court of Appeals*, *supra* note 1.

petitioners slept on their rights, and are thus precluded from questioning Pedro's 1979 agricultural leasehold contract.

Amanda, on the other hand, cannot claim that Pedro deceived her into believing that he is the sole successor to the leasehold. Part of her duties as the landowner's representative or administrator was to know the personal circumstances of the lessee Eugenio; more especially so, when Eugenio died. She was duty-bound to make an inquiry as to who survived Eugenio, in order that the landowner – or she as representative – could choose from among them who would succeed to the leasehold. Under Section 9 of RA 3844, Makapugay, or Amanda – as Makapugay's duly appointed representative or administrator – was required to make a choice, within one month from Eugenio's death, who would succeed as agricultural lessee. Thus:

> Section 9. *Agricultural Leasehold Relation Not Extinguished by Death or Incapacity of the Parties* - **In case of death** or permanent incapacity **of the agricultural lessee** to work his landholding, **the leasehold shall continue between the agricultural lessor and the person who can cultivate the landholding personally, chosen by the agricultural lessor within one month from such death or permanent incapacity, from among the following: (a) the surviving spouse; (b) the eldest direct descendant by consanguinity; or (c) the next eldest descendant or descendants in the order of their age**: Provided, That in case the death or permanent incapacity of the agricultural lessee occurs during the agricultural year, such choice shall be exercised at the end of that agricultural year: **Provided, further, That in the event the agricultural lessor fails to exercise his choice within the periods herein provided, the priority shall be in accordance with the order herein established**.
>
> In case of death or permanent incapacity of the agricultural lessor, the leasehold shall bind his legal heirs. (Emphasis supplied)

Amanda may not claim ignorance of the above provision, as ignorance of the law excuses no one from compliance therewith.[31] Thus, when she executed the 1979 Agricultural Leasehold Contract with Pedro, she is deemed to have chosen the latter as Eugenio's successor, and is presumed to have

[31] CIVIL CODE OF THE PHILIPPINES, Article 3.

diligently performed her duties, as Makapugay's representative, in conducting an inquiry prior to making the choice.

The same holds true for petitioners. They should be held to a faithful compliance with Section 9. If it is true that they entered into a unique arrangement with Pedro to alternately till the land, they were thus obliged to inform Makapugay or Amanda of their arrangement, so that in the process of choosing Eugenio's successor, they would not be left out. But evidently, they did not; they slept on their rights, and true enough, they were excluded, if there was any such alternate farming agreement between them. And after Pedro was chosen and installed as Eugenio's successor, they allowed 17 years to pass before coming out to reveal this claimed alternate farming agreement and insist on the same.

With the above pronouncements, there is no other logical conclusion than that the 1996 "*Kasunduan sa Buwisan ng Lupa*" between Amanda and petitioners, which is grounded on Pedro's inadmissible verbal admission, and which agreement was entered into without obtaining Dominga's consent, constitutes an undue infringement of Dominga's rights as Pedro's successor-in-interest under Section 9, and operates to deprive her of such rights and dispossess her of the leasehold against her will. Under Section 7[32] of RA 3844, Dominga is entitled to security of tenure; and under Section 16,[33] any modification of the lease agreement

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[32] Sec. 7. *Tenure of Agricultural Leasehold Relation*. – The agricultural leasehold relation once established shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided.

[33] Sec. 16. *Nature and Continuity of Conditions of Leasehold Contract*. – In the absence of any agreement as to the period, the terms and conditions of a leasehold contract shall continue until modified by the parties: Provided, That in no case shall any modification of its terms and conditions prejudice the right of the agricultural lessee to the security of his tenure on the landholding: Provided, further, That in case of a contract with a period an agricultural lessor may not, upon the expiration of the period increase the rental except in accordance with the provisions of Section thirty-four.

must be done with the consent of both parties and without prejudicing Dominga's security of tenure.

This Court shall not delve into the issue of re-classification or conversion of the land. Re-classification/conversion changes nothing as between the landowners and Dominga in regard to their agreement, rights and obligations. On the contrary, re-classification/conversion can only have deleterious effects upon petitioners' cause. Not being agricultural lessees of the land, petitioners may not benefit at all, for under the law, only the duly designated lessee – herein respondent – is entitled to disturbance compensation in case of re-classification/conversion of the landholding into residential, commercial, industrial or some other urban purposes.[34] Besides, a valid re-classification of the land not only erases petitioners' supposed leasehold rights; it renders them illegal occupants and sowers in bad faith thereof, since from the position they have taken as alleged lessees, they are not the owners of the land.

WHEREFORE, the Petition is **DENIED**. The assailed August 31, 2007 Decision and December 13, 2007 Resolution of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

[34] REPUBLIC ACT NO. 3844, Section 36(1).

SECOND DIVISION

[G.R. No. 181973. April 17, 2013]

AMELIA AQUINO, RODOLFO TAGGUEG, JR.,[*] ADELAIDA HERNANDEZ and LEOPOLDO BISCOCHO, JR., *petitioners, vs.* **PHILIPPINE PORTS AUTHORITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; PRINCIPLE OF *RES JUDICATA*, NOT APPLICABLE IN CASE AT BAR.— There is merit in petitioners' argument that their petition should not be dismissed on the ground of *res judicata* since this is based on jurisprudence and issuances not yet in existence at the time of the promulgation of the Court's decision in *PPA v. COA, et al*. Petitioners are, however, incorrect in their contention that the decision of the appellate court in CA -G.R. SP No. 64702 which was not appealed by the PPA has become final and as such, barred the appellate court's subsequent ruling in CA-G.R. SP No. 91743. We note that when the petition was elevated to the CA in the first instance in CA-G.R. SP No. 64702, the matter submitted to be resolved by the appellate court was simply the issue on whether the trial court was correct in granting the motion to dismiss and in declaring that the case is barred by the principle of *res judicata*. Despite the non-appeal by PPA of the appellate court's ruling that *res judicata* is not applicable, the case did not attain finality in view of the order of the CA remanding the case to the trial court for continuation of hearing. The appellate court's ruling in CA G.R. SP No. 91743, therefore, was not barred by the ruling in CA G.R. SP No. 64702 since the ruling in the second instance was already a ruling after trial on the merits.

2. ID.; ID.; PRINCIPLE OF *STARE DECISIS*, APPLIED.— [T]he petition must still fail because our ruling must adhere to the doctrine of *stare decisis*. In *Chinese Young Men's Christian*

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[*] The certification against forum shopping stated "RODOLFO TAGGUEG, JR." instead of "ALFONSO TAGGUEG, JR."

Association of the Philippine Islands v. Remington Steel Corporation, the Court expounded on the importance of this doctrine in securing certainty and stability of judicial decisions[.] x x x The issues raised by petitioners are no longer novel. In a catena of cases promulgated after *De Jesus v. COA and Cruz v. COA*, this Court has ruled that the pronouncement it has established in the earlier case of *PPA v. COA, et al.* with regard to the interpretation and application of Section 12 of RA 6758 is still applicable. The subsequent decisions maintained that allowances or fringe benefits, whether or not integrated into the standardized salaries prescribed by R.A. 6758, should continue to be enjoyed only by employees who (1) were incumbents and (2) were receiving those benefits as of 1 July 1989. In those cases, the Court reiterated that the intention of the framers of the law was to phase out certain allowances and privileges gradually, without upsetting the principle of non-diminution of pay. The intention of Section 12 to protect *incumbents* who were already r*eceiving* those allowances on 1 July 1989, when RA 6758 took effect was emphasized[.]

3. POLITICAL LAW; ADMINISTRATIVE LAW; THE SALARY STANDARDIZATION LAW (R.A. 6758); THE DENIAL OF THE 40% RATA FROM THE SECOND CATEGORY OF OFFICIALS OF THE PHILIPPINE PORTS AUTHORITY DOES NOT VIOLATE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION.— The equal protection of the laws clause of the Constitution allows classification. x x x. A law is not invalid simply because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. As explained earlier, the different treatment accorded the second sentence (first paragraph) of Section 12 of RA 6758 to the incumbents as of 1 July 1989, on one hand, and those employees hired on or after the said date, on the other, with respect to the grant of non-integrated benefits lies in the fact that the legislature intended to gradually phase out the said benefits without, however, upsetting its policy of non-diminution

of pay and benefits. The consequential outcome under Sections 12 and 17 is that if the incumbent resigns or is promoted to a higher position, his successor is no longer entitled to his predecessor's RATA privilege or to the transition allowance. After 1 July 1989, the additional financial incentives such as RATA may no longer be given by the GOCCs with the exemption of those which were authorized to be continued under Section 12 of RA 6758. Therefore, the aforesaid provision does not infringe the equal protection clause of the Constitution as it is based on reasonable classification intended to protect the rights of the incumbents against diminution of their pay and benefits.

APPEARANCES OF COUNSEL

Dabilo Cariaga for petitioners.

Office of the Government Corporate Counsel for respondent.

D E C I S I O N

PEREZ, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court praying that the Decision[2] dated 29 August 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 91743 be set aside. In the assailed decision, the CA reversed the 10 August 2005 Decision[3] and 15 September 2005 Order[4] of the Regional Trial Court (RTC), Branch 55, Manila.

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[1] *Rollo*, pp. 9-34.

[2] *Id.* at 35-44. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta concurring.

[3] *Id.* at 47-58. Penned by Acting Presiding Judge Manuel M. Barrios.

[4] Records, pp. 582-583.

Background of the case

The Congress of the Philippines passed on 21 August 1989[5] Republic Act (R.A.) No. 6758 entitled "*An Act Prescribing a Revised Compensation and Position Classification in the Government and for Other Purposes*" otherwise known as *The Salary Standardization Law*.

Before the law, or on 31 August 1979, then President Ferdinand E. Marcos issued Letter of Implementation No. 97 (LOI No. 97), authorizing the implementation of standard compensation position classification plans for the infrastructure/utilities group of government-owned or controlled corporations. On the basis thereof, the Philippine Ports Authority (PPA) issued Memorandum Circular No. 57-87 dated 1 October 1987 which granted to its officials holding managerial and supervisory positions representation and transportation allowance (RATA) in an amount equivalent to 40% of their basic salary.[6]

Thereafter, on 23 October 1989, PPA issued Memorandum Circular No. 36-89, which extended the RATA entitlement to its Section Chiefs or heads of equivalent units, Terminal Supervisors and senior personnel at the rate of 20% of their basic pay.[7] And, on 14 November 1990, PPA issued Memorandum Circular No. 46-90, which adjusted effective 1 January 1990, the RATA authorized under Memorandum Circular No. 36-89, from 20% to 40% based on the standardized salary rate.[8]

The continued validity of the RATA grant to the maximum ceiling of 40% of basic pay finds support from the Opinions[9] rendered by the Office of the Government Corporate Counsel (OGCC), Department of Justice.

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[5] Date enacted; Date of effectivity is 1 July 1989.

[6] *Rollo*, p. 15.

[7] *Id.*

[8] *Id.* at 16.

[9] *Id.* Nos. 059 and 108 dated 14 March 1990 and 11 March 1990, respectively as well as No. 68 dated 23 March 1990.

Finding justification in the increase in salary due these officials brought about by the standardization mandated by R.A. No. 6758, PPA paid RATA differentials to its officials.

The Commission on Audit (COA) Corporate Auditor, however, in a letter dated 14 November 1990, addressed to PPA, disallowed in post-audit the payment of the RATA differentials. It likewise disallowed in audit the grant of RATA to PPA Section Chiefs or heads of equivalent units, Terminal Supervisors and senior personnel occupying positions with salary grades of 17 and above who were appointed after the effectivity of R.A. No. 6758.

The COA called PPA's attention to Memorandum No. 90-679 dated 30 October 1990 which provides that "LOImp No. 97 series of 1979 implementing Compensation and Position Classification for Infrastructure/Utilities for GOCC is replaced by Section 16 of R.A. No. 6758."[10]

In view of the disallowances, the affected PPA officials, represented by the OGCC, filed a petition before the Supreme Court claiming their entitlement to the RATA provided for under LOI No. 97. The case was docketed as G.R. No. 100773 entitled "*Philippine Ports Authority v. Commission on Audit, et al*."[11]

In a decision dated 16 October 1992, the Supreme Court ruled in favor of the COA and declared that an official to be entitled to the continued RATA benefit under LOI No. 97 must be an incumbent as of 1 July 1989 and more importantly, was receiving the RATA provided by LOI No. 97 as of 1 July 1989.

As a result of the aforesaid ruling, there are at present two categories of managers and supervisors at the PPA. The first category is composed of PPA officials who were occupying their positions and actually receiving the 40% RATA under LOI No. 97 as of 1 July 1989 and who continue to receive such benefit. The second category consists of officials who

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[10] *Id.*

[11] G.R. No. 100773, 16 October 1992, 214 SCRA 653.

were not incumbents as of 1 July 1989 or were appointed or promoted to their positions only after 1 July 1989. The second category officials therefore receive a lesser RATA under the General Appropriations Act although they hold the same rank, title and may have the same responsibilities as their counterparts in the first category.

The Case

On 26 July 2000, petitioners, who are second category PPA officials filed a Petition for *Mandamus* and Prohibition before the RTC of Manila, raffled to Branch 55. They claim anew that they are entitled to RATA in the amount not exceeding 40% of their respective basic salaries. They anchor their petition on recent developments allegedly brought about by the decision of the Supreme Court in the case of *De Jesus v. Commission on Audit, et al.*[12] which was decided almost six (6) years after the Court's decision in *PPA v. COA, et al.*[13] They further claim that certain issuances were released by the COA and the Department of Budget and Management (DBM), which in effect, extended the cut-off date in the grant of the 40% RATA, thus entitling them to these benefits.

PPA filed a motion to dismiss on the ground of *res judicata* under paragraph (f), Rule 16 of the Rules of Court. It argued that a case involving the same parties, subject matter and cause of action had already been resolved by this Court in *PPA v. COA, et al.*[14]

Finding merit in PPA's motion, the RTC ordered the dismissal of the petition in an Order dated 8 November 2000. The dispositive portion of the Order reads:

> WHEREFORE, premises considered, the Motion to Dismiss is hereby GRANTED, and the Petition in this case is hereby DISMISSED on the ground that it is already barred by the principle of *res judicata*.[15]

[12] 355 Phil. 584 (1998).

[13] *Supra* note 11.

[14] *Id.*

[15] *Rollo*, p. 93. CA Decision in CA-G.R. SP No. 64702.

Petitioners elevated the case before the Supreme Court by way of appeal under Rule 45 of the Rules of Court. The Supreme Court, however, in a Resolution[16] dated 28 March 2001 referred the case to the CA for appropriate action. The case was docketed as CA G.R. SP No. 64702.

On 31 July 2002, a decision was rendered by the CA on the referred case. It declared that the principle of *res judicata* is not applicable to the case. The appellate court explained that the existence of DBM and COA issuances which entitle herein petitioners to the grant of RATA is the pertinent fact and condition which is material to the instant case taking it away from the domain of the principle of *res judicata.*[17] When new facts or conditions intervene before the second suit, furnishing a new basis for the claims and defenses of the party, the issues are no longer the same; hence, the former judgment cannot be pleaded as a bar to the subsequent action.[18] At the time judgment was rendered in the previous case, the fact and condition now in existence, which consist of the DBM and COA issuances, has not yet come about. In view of the issuances, petitioners are faced with an entirely separate facts and conditions, which make the principle of *res judicata* inapplicable.[19] The decision ordered the remand of the case to the court of origin for continuation of proceedings.

After due proceedings in the trial court, a decision in favor of petitioners was rendered on 10 August 2005. The dispositive portion of the decision commanded respondent PPA to pay the claim for RATA equivalent to 40% of petitioners' standardized basic salaries authorized under LOI No. 97, commencing from their respective dates of appointments or on 23 October 2001

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[16] *Id.* at 165.

[17] *Id.* at 101.

[18] *Id.* at 101-102 citing *Lord v. Garland*, 168 P. 2d 5 (1946); *Rhodes v. Van Steenberg*, 225 F. Supp. 113 (1963); *Cowan v. Gulf City Fisheries, Inc.*, 381 So. 2d 158 (1980).

[19] *Id.* at 102.

when the case of *Irene V. Cruz, et al. v. COA*[20] was promulgated by the Supreme Court, whichever is later.

The trial court ratiocinated that "when the Supreme Court *En Banc* ruled on 23 October 2001 in the *IRENE CRUZ* case that 'The date of hiring of an employee cannot be considered as a substantial distinction,' the so-called first (sic) category managers and supervisors whose appointments thereto were made after 01 July 1989 and who were effectively deprived of the 40% RATA on account of the Supreme Court's ruling in the *PPA v. COA, et al.* case have established a clear legal right to claim the 40% RATA under LOI No. 97 commencing on 23 October 2001, and the correlative legal duty of respondent PPA to pay the same; thus, entitling petitioners who are qualified to avail of the extraordinary remedy of *mandamus*."[21]

PPA raised the matter before the CA which docketed the case as CA G.R. SP No. 91743. In a decision dated 29 August 2007, the appellate court reversed the decision of the trial court and held:

> WHEREFORE, premises considered, the August 10, 2005 Decision and the September 15, 2005 Order of the Regional Trial Court, Branch 55, National Capital Judicial Region, Manila, are hereby REVERSED. Accordingly, the Amended Petition in Civil Case No. 00-98161 is hereby DISMISSED. No costs.[22]

Petitioners filed a motion for reconsideration but this was denied by the appellate court in a resolution dated 29 February 2008.

Hence, this petition assailing the 29 August 2007 decision of the CA and its 29 February 2008 resolution.

Issues

Petitioners raise the following issues for resolution:

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[20] 420 Phil. 103 (2001).

[21] *Rollo*, p. 57.

[22] *Id.* at 44.

I. WHETHER OR NOT THE PRINCIPLE OF *RES JUDICATA* IS APPLICABLE IN THE INSTANT CASE TAKING INTO CONSIDERATION THE FINAL DECISION OF THE COURT OF APPEALS IN CA. G.R. SP NO. 64702.

II. WHETHER OR NOT PPA IN DENYING THE CLAIM OF PETITIONERS FOR 40% RATA HAS COMMITTED A VIOLATION OF THEIR CONSTITUTIONAL RIGHT TO EQUAL PROTECTION; AND

III. WHETHER OR NOT PETITIONERS ARE ENTITLED TO 40% RATA AND SHOULD NOT BE MADE TO REFUND THE RATA THEY HAD ALREADY RECEIVED.

Petitioners' Argument

Petitioners submit that the decision of the CA in CA G.R. SP No. 64702 adequately cited jurisprudence and authorities on the matter involving the issue of *res judicata*. Such decision of the appellate court was not appealed by the PPA and as such, has attained finality. In view thereof, petitioners allege that the case of *PPA v. COA, et al.*[23] can no longer serve as a ground for the dismissal of the instant case since such would result in "the sacrifice of justice to technicality."[24]

Petitioners further submit that the CA in its decision in CA G.R. SP No. 91743 may have overlooked the significance of the Supreme Court's ruling in the case of *De Jesus v. Commission on Audit, et al.*[25] which extended the prescribed date of effectivity of R.A. No. 6758 from 1 July 1989 to 31 October 1989, *viz*:

In the present case under scrutiny, it is decisively clear that DBM-CCC No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees starting November 1, 1989 is not a mere interpretative or internal regulation. It is something more than that. And why not, when it tends to deprive government workers of their allowances and additional compensation sorely needed to keep body and soul together. x x x

[23] *Supra* note 11.

[24] *Rollo*, pp. 153-154. Memorandum of petitioners.

[25] *Supra* note 12 at 590-591.

Petitioners claim that the DBM, which is the agency tasked to implement R.A. No. 6758, amplified this extension in its 4 May 1992 letter to the Administrator of the National Electrification Administration (NEA). The pertinent portion of the letter reads:

> DBM has authorized certain GOCCs/GFIs to grant also to officials and employees hired between the period of July 1, 1989 and October 31, 1989 the allowances and fringe benefit enumerated in said Item 5.5 of CCC No. 10.
>
> At this juncture it is pertinent to point out that although the effectivity date prescribed in R.A. No. 6758 is July 1, 1989, said Act and its implementing circulars were formally promulgated only in the later part of October 1989. The preparation of all required documents, more particularly the Index of Occupational Services (IOS) and the Position Allocation List (PAL) for the GOCCs/GFIs was completed at much later date. Thus, within the period of transition from July 1, 1989 up to the date of completion of all the required documents for the actual implementation by each GOCC/GFI of said salary standardization, flexibility in the interpretation of rules and regulations prescribed under R.A. 6758 was necessary. DBM felt it illogical to assume that during the period R.A. 6758 was not yet issued all GOCCs/GFIs were already aware of what implementing guidelines it (DBM) will prescribe and have their personnel actions accordingly adjusted to said guidelines. Likewise, it is counter-productive if at that time, we advised all GOCCs/GFIs to suspend their personnel actions as same could be disruptive to their operations and delay the completion of important projects.
>
> Premised on the above considerations, we maintain the position that our action allowing officials and employees hired between the period of July 1, 1989 and October 31, 1989 to be paid allowances under Item No. 5.5 of CCC No. 10 is logically tenable and reasonable since same was made during the "transitory period" from the old system to the new system.[26]

They further claim that even the COA took cognizance of this extension in the memorandum[27] issued by the officer-in-charge of the COA Audit Office, to wit:

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[26] *Rollo,* p. 157.

[27] *Id.* at 158.

Moreover, this office gives much weight to the position of the Secretary, DBM in his letter to the Administrator, NEA, dated October 30, 1993 that the cut-off date of July 1, 1989 prescribed in R.A. 6758/ CCC #10 was extended to October 31, 1989 primarily on consideration that said R.A. 6758/CCC #10 were formally issued/promulgated only in the later part of October 1989. x x x

Petitioners likewise raised as their cause of action the violation of their constitutional right to equal protection of the law. They contend that this alone would constitute sufficient justification for the filing anew of the instant petition. Contrary to the statement in the assailed decision of the CA to the effect that they failed to plead or raise such issue in the trial court, they submit that a perusal of their amended petition would show that paragraphs 30, 31, 32 and 33 thereof were devoted to that issue.

Finally, as regards the matter of refund of the RATA being demanded by COA, petitioners submit that they should not be required to make such refund since these were received in good faith and on the honest belief that they were entitled to it.

PPA's Argument

Respondent PPA maintains that PPA employees who were appointed to managerial and supervisory positions after the effectivity of RA No. 6758 are not entitled to the 40% RATA benefit provided under LOI No. 97. Consistent with the ruling of the Court in *PPA v. COA, et al.*,[28] respondent PPA contends that only the first category officials or those who were granted and were receiving RATA equivalent to 40% of their salaries prior to 1 July 1989 are entitled to such benefits. Petitioners who are included in the second category officials or those who are not incumbents as of 1 July 1989 are not entitled to the 40% RATA benefit provided under LOI No. 97.

Our Ruling

There is merit in petitioners' argument that their petition should not be dismissed on the ground of *res judicata* since this is based on jurisprudence and issuances not yet in existence

[28] *Supra* note 11.

at the time of the promulgation of the Court's decision in *PPA v. COA, et al.*[29] Petitioners are, however, incorrect in their contention that the decision of the appellate court in CA-G.R. SP No. 64702 which was not appealed by the PPA has become final and as such, barred the appellate court's subsequent ruling in CA-G.R. SP No. 91743.

We note that when the petition was elevated to the CA in the first instance in CA-G.R. SP No. 64702, the matter submitted to be resolved by the appellate court was simply the issue on whether the trial court was correct in granting the motion to dismiss and in declaring that the case is barred by the principle of *res judicata*. Despite the non-appeal by PPA of the appellate court's ruling that *res judicata* is not applicable, the case did not attain finality in view of the order of the CA remanding the case to the trial court for continuation of hearing. The appellate court's ruling in CA G.R. SP No. 91743, therefore, was not barred by the ruling in CA G.R. SP No. 64702 since the ruling in the second instance was already a ruling after trial on the merits.

Although the principle of *res judicata* is not applicable, the petition must still fail because our ruling must adhere to the doctrine of *stare decisis*. In *Chinese Young Men's Christian Association of the Philippine Islands v. Remington Steel Corporation*,[30] the Court expounded on the importance of this doctrine in securing certainty and stability of judicial decisions, thus:

> Time and again, the court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that **for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially**

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[29] *Id.*

[30] G.R. No. 159422, 28 March 2008, 550 SCRA 180, 197-198.

the same, even though the parties may be different. It proceeds from the first principle of justice that, **absent any powerful countervailing considerations, like cases ought to be decided alike**. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, **the rule of *stare decisis* is a bar to any attempt to relitigate the same issue**. (Emphasis supplied)

The issues raised by petitioners are no longer novel. In a catena of cases[31] promulgated after *De Jesus v. COA*[32] and *Cruz v. COA*,[33] this Court has ruled that the pronouncement it has established in the earlier case of *PPA v. COA, et al.*[34] with regard to the interpretation and application of Section 12 of RA 6758 is still applicable. The subsequent decisions maintained that allowances or fringe benefits, whether or not integrated into the standardized salaries prescribed by R.A. 6758, should continue to be enjoyed only by employees who (1) were incumbents and (2) were receiving those benefits as of 1 July 1989.

In those cases, the Court reiterated that the intention of the framers of the law was to phase out certain allowances and privileges gradually, without upsetting the principle of non-diminution of pay. The intention of Section 12 to protect *incumbents* who were already *receiving* those allowances on 1 July 1989, when RA 6758 took effect was emphasized thus:

An incumbent is a person who is in present possession of an office.

The consequential outcome, under Sections 12 and 17, is that if the incumbent resigns or is promoted to a higher position, his

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[31] *Social Security System v. COA*, 433 Phil. 946 (2002); *Ambros v. COA*, 501 Phil. 255 (2005); *PNB v. Palma, 503 Phil. 917 (2005)*; *Agra, et al. v. COA*, G.R. No. 167807, 6 December 2011, 661 SCRA 563.

[32] *Supra* note 12.

[33] *Supra* note 20.

[34] *Supra* note 11.

successor is no longer entitled to his predecessor's RATA privilege x x x or to the transition allowance.

Finally, to explain what July 1, 1989 pertained to, we held in the same case as follows:

x x x. The date July 1, 1989 becomes crucial only to determine that as of said date, the officer was an *incumbent* and was *receiving* the RATA, for purposes of entitling him to its continued grant. x x x.

In *Philippine International Trading Corporation v. COA*, the Court confirmed the legislative intention in this wise:

x x x [T]here was no intention on the part of the legislature to revoke existing benefits being enjoyed by *incumbents* of government positions at the time of the passage of RA 6758 by virtue of Sections 12 and 17 thereof. x x x.

The Court stressed that in reserving the benefits to incumbents alone, the legislature's intention was not only to adhere to the policy of non-diminution of pay, but also to be consistent with the prospective application of laws and the spirit of fairness and justice.[35] (Emphasis omitted)

x x x x x x x x x

The disquisition of the Court in *Philippine National Bank v. Palma*[36] is instructive, *viz*:

The reliance of the court *a quo* on *Cruz v. COA* is misplaced. It was held in that case that the specific date of hiring, October 31, 1989, had been not only *arbitrarily determined* by the COA, but also used as an unreasonable and unsubstantial basis for awarding allowances to employees. The basis for the Court's ruling was not primarily the resulting disparity in salaries received for the same work rendered but, more important, the absence of a distinction in the law that allowed the grant of such benefits — between those hired before and those after the said date.

Thus, setting a particular date as a distinction was nullified, not because it was constitutionally infirm or was against the "equal pay

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[35] *Agra, et. al. v. COA*, G.R. No. 167807, 6 December 2011, 661 SCRA 563, 585-586.

[36] 503 Phil. 917, 931-932 (2005).

for equal work" policy of RA 6758. Rather, the reason was that the COA had acted without or in excess of its authority in arbitrarily choosing October 31, 1989, as the cutoff date for according the allowances. It was explained that "when the law does not distinguish, neither should the court." And for that matter, neither should the COA.

In consonance with *stare decisis*, there should be no more misgivings about the proper application of Section 12. In the present case, the payment of benefits to employees hired after July 1, 1989, was properly withheld, because the law clearly mandated that those benefits should be reserved only to incumbents who were already enjoying them before its enactment. Withholding them from the others ensured that the compensation of the incumbents would not be diminished in the course of the latter's continued employment with the government agency.

It bears emphasis also that in promulgating the *Irene Cruz* case, there was no intention on the part of the Court to abandon its earlier ruling in *PPA v. COA, et al.*[37] The factual circumstances in the former case are different from those attendant in the case of herein petitioners. In fine, the *Irene Cruz* case is not on all fours with the present case. The petitioners in the former case, who were employees of the Sugar Regulatory Administration, were able to obtain from the Office of the President a *post facto* approval or ratification of their social amelioration benefit. No such authority granted by the Office of the President has been presented by the second category officials of the PPA.

Petitioners further invoked that the denial of their claim of 40% RATA violated their constitutional right to equal protection of the laws. We note that the Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not prohibit discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.[38]

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[37] *Supra* note 11.

[38] *Ambros v. COA*, 501 Phil. 255, 278 (2005).

The equal protection of the laws clause of the Constitution allows classification. x x x. A law is not invalid simply because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class.[39]

As explained earlier, the different treatment accorded the second sentence (first paragraph) of Section 12 of RA 6758 to the incumbents as of 1 July 1989, on one hand, and those employees hired on or after the said date, on the other, with respect to the grant of non-integrated benefits lies in the fact that the legislature intended to gradually phase out the said benefits without, however, upsetting its policy of non-diminution of pay and benefits.[40]

The consequential outcome under Sections 12 and 17 is that if the incumbent resigns or is promoted to a higher position, his successor is no longer entitled to his predecessor's RATA privilege or to the transition allowance. After 1 July 1989, the additional financial incentives such as RATA may no longer be given by the GOCCs with the exemption of those which were authorized to be continued under Section 12 of RA 6758.[41]

Therefore, the aforesaid provision does not infringe the equal protection clause of the Constitution as it is based on reasonable classification intended to protect the rights of the incumbents against diminution of their pay and benefits.[42]

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[39] *Id.*

[40] *Id.*

[41] *Social Security System v. COA, supra* note 31 at 959.

[42] *Id.*

Anent the issue of refund, we note that petitioners were referring to the RATA received by the second category officials pursuant to PPA Memorandum Circular No. 36-89 dated 23 October 1989 and PPA Memorandum Circular No. 46-90 dated 14 November 1990. We deem it no longer necessary to discuss this issue considering that it was already ruled upon in the earlier *PPA* case and was even part of the dispositive portion[43] of the decision which became final and executory. Well-settled is the rule that once a judgment becomes final and executory, it can no longer be disturbed, altered, or modified in any respect. It is essential to an effective administration of justice that once a judgment has become final, the issue or cause therein should be laid to rest.[44] The arguments of petitioners regarding this issue should have been raised in that case and not in this present petition.

We conclude this case with the words borrowed from former Chief Justice Artemio V. Panganiban:

> During these tough economic times, this Court understands, and in fact sympathizes with, the plight of ordinary government employees. Whenever legally possible, it has bent over backwards to protect labor and favor it with additional economic advantages. In the present case, however, the Salary Standardization Law clearly provides that the claimed benefits shall continue to be granted only to employees who were "incumbents" as of July 1, 1989. Hence, much to its regret, the Court has no authority to reinvent or modify the law to extend those benefits even to employees hired *after* that date.[45]

WHEREFORE, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision dated 29 August 2007 and Resolution dated 29 February 2008 of the Court Appeals in CA-G.R. SP No. 91743 are **AFFIRMED.** No pronouncement as to costs.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[43] *PPA v. COA, et al., supra* note 11.

[44] *Aurora Tamayo v. People*, G.R. No. 174698, 28 July 2008, 560 SCRA 312, 323.

[45] *Philippine National Bank v. Palma, supra* note 36 at 920.

FIRST DIVISION

[G.R. No. 183858. April 17, 2013]

HOLY TRINITY REALTY DEVELOPMENT CORPORATION, represented by JENNIFER R. MARQUEZ, *petitioner, vs.* **SPOUSES CARLOS AND ELIZABETH ABACAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FILING A PETITION FOR *CERTIORARI* DIRECTLY WITH THE COURT OF APPEALS VIOLATES THE PRINCIPLE OF JUDICIAL HIERARCHY.— HTRDC correctly argued that respondents erred in filing the special civil action for *certiorari* directly with the CA instead of the RTC. In doing so, they violated the time-honored principle of respect for the hierarchy of courts. While this Court, the CA, and the RTC have concurrent jurisdiction to issue writs of *certiorari*¸ the parties to a suit are not given unbridled freedom to choose between court forums. Judicial hierarchy indicates that "petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the [RTC], and those against the latter, with the [CA]." Therefore, respondents' petition for *certiorari* was dismissible outright on procedural grounds.

2. ID.; ID.; ID.; THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT RESOLVED AN ISSUE WHICH IS NOT THE SUBJECT OF THE PETITION.— [W]e find that the CA committed reversible error in ruling that the MTCC had no jurisdiction over the unlawful detainer case. What was before it was a petition for *certiorari* against the MTCC's denial of respondents' motion to quash. The petition was not directed at the MTCC's Consolidated Decision of 25 May 2005, nor could it be, because a Rule 65 petition for *certiorari* must be filed not later than 60 days from notice of the judgment. Since respondents failed to timely appeal the Consolidated Decision, it has long attained finality and has become immutable and unalterable pursuant to the doctrine on finality of judgment.

3. ID.; ID.; UNLAWFUL DETAINER; SUBSEQUENT ACQUISITION OF OWNERSHIP IS NOT A SUPERVENING EVENT THAT WILL BAR THE EXECUTION OF THE JUDGMENT IN AN UNLAWFUL DETAINER CASE.— In this case, the motion to quash was grounded on the sole argument that the judgment should no longer be enforced because of the occurrence of a material supervening event. Respondents alleged that before the *alias* writs were issued, but after the MTCC rendered judgment in the unlawful detainer case, they had acquired ownership over the subject property as evidenced by Emancipation Patent Nos. 00780489 and 00780490. The MTCC correctly denied their motion, citing our ruling in *Oblea v. Court of Appeals* and *Chua v. Court of Appeals* to the effect that the subsequent acquisition of ownership is not a supervening event that will bar the execution of the judgment in the unlawful detainer case. x x x It is well-settled that the sole issue in ejectment cases is physical or material possession of the subject property, independent of any claim of ownership by the parties. The argument of respondent-spouses that they subsequently acquired ownership of the subject property cannot be considered as a supervening event that will bar the execution of the questioned judgment, as unlawful detainer does not deal with the issue of ownership.

APPEARANCES OF COUNSEL

Burkley & Aquino Law Office for petitioner.
Gaviola Law Offices for respondents.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review under Rule 45 assailing the Decision[1] and Resolution[2] of the Court of Appeals (CA) in

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[1] *Rollo*, pp. 34-48; CA Decision dated 27 March 2008, penned by Presiding Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Amelita G. Tolentino and Lucenito N. Tagle.

[2] *Id.* at 50-51; CA Resolution dated 14 July 2008, penned by Presiding Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Amelita G. Tolentino and Marlene Gonzales-Sison.

CA-G.R. SP No. 97862. The CA recalled and set aside the Order[3] of the Municipal Trial Court in Cities (MTCC), Branch 2, Malolos City, and granted respondents' Motion to Quash *Alias* Writ of Possession and Demolition[4] in Civil Case Nos. 03-140 to 03-143.

The facts of the case are as follows:

A parcel of land located in Sumapang, Malolos City is registered in the name of Freddie Santiago (Santiago) under Transfer Certificate of Title (TCT) No. 103697.[5] On 23 August 1999, petitioner Holy Trinity Realty Development Corporation (HTRDC) acquired the property from Santiago, but later found that the lot was already occupied by some individuals, among them respondent-spouses Carlos and Elizabeth Abacan.[6]

HTRDC then filed a complaint for forcible entry against respondent-spouses and the other occupants. It withdrew the complaint, however, because it needed to verify the exact location of the property, which the occupants claimed was covered by emancipation patents issued by the Department of Agrarian Reform Adjudication Board (DARAB).

HTRDC commenced a complaint with the DARAB for cancellation of emancipation patents against some of the occupants of the land. During the pendency of the DARAB case, the occupants' possession was tolerated.[7] On 30 April 2002, the provincial adjudicator ordered the cancellation of the emancipation patents of the occupants of the land.[8] The DARAB later affirmed the decision of the provincial adjudicator.[9]

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[3] *Id.* at 193-195; MTCC Order dated 17 January 2007, penned by Presiding Judge Nemesio V. Manlangit.

[4] *Id.* at 184-186.

[5] *Id.* at 57-58.

[6] *Id.* at 14.

[7] *Id.* at 110.

[8] *Id.* at 62-74; Decision of the Provincial Adjudicator dated 30 April 2002.

[9] *Id.* at 79-87; Decision of the DARAB dated 19 September 2007.

On 4 November 2003, HTRDC filed a complaint for unlawful detainer and damages with the MTCC of Malolos against the occupants of the subject land, again including respondent spouses.[10] Petitioner alleged that from the time it purchased the property in 1999 until the pendency of the DARAB case, it had no immediate need for the subject parcel of land. When the need arose, it made both verbal and written demands on the occupants to vacate the property. Despite its final demand on 17 June 2003, the occupants failed to vacate the property. Thus, HTRDC had to resort to the filing of an ejectment case against them.

Proceedings in the MTCC ensued, culminating in a Decision in favor of HTRDC. The trial court ordered the occupants to vacate the premises and to pay reasonable rent, attorney's fees and costs of suit.[11] Respondents moved to reconsider the decision, but their motion for reconsideration was denied for being a prohibited pleading in summary proceedings. The MTCC then ordered the issuance of a writ of execution.[12] Respondents appealed on 15 August 2005, but their appeal was denied due course for being filed out of time, as the period to appeal had not been stayed by the filing of the motion for reconsideration.[13] Thus, the Decision became final and executory.

Meanwhile, the provincial agrarian reform officer (PARO) filed an action for annulment of sale against HTRDC.[14] Respondents thereafter moved to stay execution on the ground that a supervening event had transpired.[15] The MTCC denied the motion, ruling that the mere filing of an action by the PARO

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[10] *Id.* at 88-95; Complaint dated 23 October 2003.

[11] *Id.* at 109-116; Consolidated Decision dated 25 May 2005, penned by Judge Nemesio V. Manlangit.

[12] *Id.* at 117; Order dated 8 July 2005.

[13] *Id.* at 122; Order dated 18 August 2005.

[14] *Id.* at 123-124; Motion to Stay Execution Including the Special Demolition Order dated 30 May 2006.

[15] *Id.* at 123-126.

did not materially change the situation of the parties, and hence, may not be considered as a supervening event.[16]

In order to prevent the enforcement of the writ of execution and demolition, respondents filed several actions in the Regional Trial Court (RTC), to wit: (1) Civil Case No. 245-M-2006 for annulment of judgment;[17] (2) Special Civil Action No. 364-M-2006 for *certiorari*;[18] and (3) Civil Case No. 59-M-2007 for quieting of title.[19] Civil Case No. 245-M-2006 and Special Civil Action No. 364-M-2006 were both dismissed by the RTC on the grounds of forum shopping and immutability of final judgment,[20] while Civil Case No. 59-M-2007 was dismissed on the ground of finality of judgment.[21] Respondents did not appeal any of the adverse rulings.

The MTCC issued an *Alias* Writ of Execution on 25 October 2006,[22] and an *Alias* Special Order of Demolition on 28 October 2006.[23] Respondents moved to quash both writs on the ground that Emancipation Patent Nos. 00780489 and 00780490 had been issued in their favor during the pendency of the case. As such, they argued that they had now acquired ownership of relevant portions of the subject property.[24] The MTCC denied their motion on the ground that respondents' acquisition of ownership is not a supervening event that will bar the execution of the judgment in the unlawful detainer case.[25]

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[16] *Id.* at 127-129; Order dated 5 June 2006.

[17] *Id.* at 130-139; Petition dated 21 April 2006.

[18] *Id.* at 140-151; Petition dated 14 June 2006.

[19] *Id.* at 152-160; Petition dated 29 January 2007.

[20] *Id.* at 164-170; Order dated 31 July 2006.

[21] *Id.* at 171-177; Order dated 31 January 2007.

[22] *Id.* at 178-181.

[23] *Id.* at 182-183.

[24] *Id.* at 184-186; Motion to Quash *Alias* Writ of Possession & Demolition dated 30 November 2006 (should be "Motion to Quash *Alias* Writ of Execution & Demolition").

[25] *Id.* at 193-195; Order dated 17 January 2007.

From the Order of the MTCC denying their motion to quash, respondents filed directly with the CA a Special Civil Action for *Certiorari* with Prayer for a Temporary Restraining Order and Writ of Preliminary Injunction.[26]

The appellate court issued a Writ of Preliminary Injunction[27] and ultimately granted the petition for *certiorari* in a Decision dated 27 March 2008. The CA held that the MTCC had no jurisdiction over the unlawful detainer case, and disposed of the case as follows:

> IN VIEW OF ALL THE FOREGOING, the instant petition is hereby **GRANTED** and the Order dated January 17, 2007 of the Municipal Trial Court in Cities (MTCC), Branch 2 of Malolos City, Bulacan, issued in Civil Case No. 03-140, is **RECALLED and SET ASIDE** and, in lieu thereof, the Motion to Quash *Alias* Writ of Possession [sic] and Demolition of the petitioners in said case is **GRANTED**. The writ of preliminary injunction earlier issued is thus made permanent. No pronouncement as to costs.
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> SO ORDERED.[28]

Aggrieved by the decision of the CA, petitioner HTRDC filed the instant petition for review before this Court.

The Court's Ruling

We find merit in the instant petition.

Before proceeding to the merits of the case, we first deal with a procedural issue.

HTRDC correctly argued that respondents erred in filing the special civil action for *certiorari* directly with the CA instead of the RTC. In doing so, they violated the time-honored principle of respect for the hierarchy of courts. While this Court, the CA, and the RTC have concurrent jurisdiction to issue writs of *certiorari*¸ the parties to a suit are not given unbridled freedom

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[26] *Id.* at 196-221; Petition dated 8 February 2007.

[27] *Id.* at 225-226; Writ of Preliminary Injunction dated 16 August 2007.

[28] *Id.* at 47; CA Decision dated 27 March 2008.

to choose between court forums.[29] Judicial hierarchy indicates that "petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the [RTC], and those against the latter, with the [CA]."[30] Therefore, respondents' petition for *certiorari* was dismissible outright on procedural grounds.

Turning now to the merits of the petition, we find that the CA committed reversible error in ruling that the MTCC had no jurisdiction over the unlawful detainer case. What was before it was a petition for *certiorari* against the MTCC's denial of respondents' motion to quash. The petition was not directed at the MTCC's Consolidated Decision of 25 May 2005, nor could it be, because a Rule 65 petition for *certiorari* must be filed not later than 60 days from notice of the judgment.[31] Since respondents failed to timely appeal the Consolidated Decision, it has long attained finality and has become immutable and unalterable pursuant to the doctrine on finality of judgment.[32] Thus, as respondents' sole argument in their motion to quash was the existence of a material supervening event, and as the MTCC's denial of their motion was premised on the conclusion that their subsequent acquisition of ownership was not a supervening event, the resolution of the present case should be limited to that issue.

Did the MTCC commit grave abuse of discretion in denying respondents' motion to quash? We rule in the negative.

The term "grave abuse of discretion" has a specific meaning in jurisprudence. In *Litton Mills v. Galleon Traders*,[33] we explained:

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[29] *Rayos v. City of Manila*, G.R. No. 196063, 14 December 2011, 662 SCRA 684, 689.

[30] *People v. Cuaresma*, 254 Phil. 418, 427 (1989).

[31] RULES OF COURT, Rule 65, Section 4.

[32] *Gallardo-Corro v. Gallardo*, 403 Phil. 498 (2001).

[33] 246 Phil. 503, 509 (1988).

An act of a court or tribunal may only be considered as committed in grave abuse of discretion when the same was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to 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 personal hostility. x x x. (Citation omitted)

In this case, the motion to quash was grounded on the sole argument that the judgment should no longer be enforced because of the occurrence of a material supervening event. Respondents alleged that before the *alias* writs were issued, but after the MTCC rendered judgment in the unlawful detainer case, they had acquired ownership over the subject property as evidenced by Emancipation Patent Nos. 00780489 and 00780490.[34]

The MTCC correctly denied their motion, citing our ruling in *Oblea v. Court of Appeals*[35] and *Chua v. Court of Appeals*[36] to the effect that the subsequent acquisition of ownership is not a supervening event that will bar the execution of the judgment in the unlawful detainer case. According to the MTCC:

This court gives due weight to the ruling of the Supreme Court in the cases of *Oblea vs. Court of Appeals* (244 SCRA 101) and *Chua vs. Court of Appeals* (271 SCRA 564), wherein it made a categorical pronouncement that the subsequent acquisition of ownership by any person is not a supervening event that will bar the execution of the judgment in the unlawful detainer case. True it is that the sole issue in an action for unlawful detainer x x x is physical or material possession. Such issue of physical or material possession was already pass[ed] upon by this court during trial. As held in the case of *Dizon*

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[34] *Id.* at 184-186; Motion to Quash *Alias* Writ of Possession & Demolition dated 30 November 2006.

[35] 313 Phil. 804 (1995).

[36] 338 Phil. 262 (1997).

vs. Concina (30 SCRA 897), the judgment rendered in an action for forcible entry or detainer shall be effective with respect to the possession only and in no wise bind the title or affect the ownership of the land or building. Such judgment shall not bar an action between the parties respecting title to the land or building. (Sec. 18, Rule 70, 1997 Rules of Civil Procedure)[37]

It is well-settled that the sole issue in ejectment cases is physical or material possession of the subject property, independent of any claim of ownership by the parties.[38] The argument of respondent-spouses that they subsequently acquired ownership of the subject property cannot be considered as a supervening event that will bar the execution of the questioned judgment, as unlawful detainer does not deal with the issue of ownership.

As the case now stands, both parties are claiming ownership of the subject property: petitioner, by virtue of a Deed of Sale executed in its favor by the registered land owner; and respondents, by subsequently issued emancipation patents in their names. This issue would more appropriately be ventilated in a full-blown proceeding, rather than in a motion to stay the execution of the judgment rendered in the instant summary ejectment proceeding. To reiterate, the sole issue in the present case is *de facto* possession of the subject property, and this was conclusively settled by the MTCC in HTRDC's favor in its final and executory Consolidated Decision of 25 May 2005. We therefore rule that the CA committed reversible error in ruling that the MTCC committed grave abuse of discretion in denying respondents' motion to quash the *alias* writs of execution and demolition.

WHEREFORE, the instant Petition for Review is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 97862 dated 27 March 2008

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[37] *Rollo*, p. 194; Order dated 17 January 2007.

[38] *Carbonilla v. Abiera*, G.R. No. 177637, 26 July 2010, 625 SCRA 461, 469.

and 14 July 2008, respectively, are hereby **SET ASIDE** and **REVERSED**. The Order dated 17 January 2007 of the Municipal Trial Court in Cities, Branch 2, Malolos City, in Civil Case Nos. 03-140 to 03-143 is hereby **REINSTATED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 184079. April 17, 2013]

SPS. ARMANDO SILVERIO, SR. AND REMEDIOS SILVERIO, *petitioners, vs.* **SPS. RICARDO AND EVELYN MARCELO,** *respondents.*

[G.R. No. 184490. April 17, 2013]

SPS. EVELYN AND RICARDO MARCELO, *petitioners, vs.* **SPS. ARMANDO SILVERIO, SR. AND REMEDIOS SILVERIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; NATURE.— Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. In an unlawful detainer case, the sole issue for resolution is physical or material possession

of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.

2. ID.; CIVIL PROCEDURE; FORUM SHOPPING; THREE TESTS TO VERIFY WHETHER THERE IS IDENTITY OF CAUSES OF ACTION FOR PURPOSES OF APPLYING THE PRINCIPLE OF *RES JUDICATA*, REITERATED.— In *Agustin v. Delos Santos*, the Court cited three tests to verify whether there is identity of causes of action for purposes of applying the principle of *res judicata*. The first test is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions. The more common approach in ascertaining identity of causes of action is the "same evidence test," whereby the following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?" If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not. Aside from the "absence of inconsistency test" and "same evidence test," we have also ruled that a previous judgment operates as a bar to a subsequent one when it had touched on a matter already decided, or if the parties are in effect "litigating for the same thing."

3. ID.; ID.; ID.; ID.; "SAME EVIDENCE TEST", APPLIED; A PARTY IS ENGAGED IN FORUM SHOPPING BY FILING SEPARATE CASES FOR UNLAWFUL DETAINER BASED ON A SINGLE CLAIM OF OWNERSHIP.— By applying the "same evidence test," however, it becomes apparent that the proof necessary to obtain affirmative relief in Civil Case No. 2004-269 is the same as that in Civil Case No. 2004-271. Since the spouses Marcelo are claiming sole ownership of Lot 3976 in their MSA, the evidence needed to establish better right of possession over the house constructed by Florante Marcelo and Marilou Silverio, and the one built by the Silverios is the same, regardless of the fact that they were built on separate portions of said lot. We have ruled time and again that "a party cannot, by varying

the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated." Evidently, the spouses Marcelo engaged in forum shopping by filing separate cases for unlawful detainer based on a single claim of ownership over Lot 3976. Said act is likewise tantamount to splitting a cause of action which, in this case, is a cause for dismissal on the ground of *litis pendentia*. On this score alone, the petition for review on *certiorari* filed by the spouses Marcelo in G.R. Nos. 184490 must fail, alongside their averments in G.R. No. 184079.

4. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; PARTIES WHO HAVE ESTABLISHED THEIR DWELLING ON THE SUBJECT LOT FOR A LONG PERIOD HAVE BETTER RIGHT TO POSSESS THE SAME THAN MERE HOLDERS OF TAX DECLARATION.— It is undisputed by the spouses Marcelo that the Silverios presently occupy those portions of Lot 3976 which are the subjects of the consolidated petitions before us. In particular, the Silverios tie their possession of the parcel at issue in G.R. No. 184490 to Florante Marcelo who appropriated a portion of Lot 3976 for himself, and with his wife, constructed a house thereon in 1986. As regards the portion of Lot 3976 subject of G.R. No. 184079, the Silverios have established their dwelling thereon in 1987 - long after Lot 3976 was classified as alienable and disposable public land on January 3, 1968. Meanwhile, the spouses Marcelo insist on their better right to possess the contested parcels as holders of Tax Declaration No. E-008-19942 in the name of Ricardo Marcelo. Said tax declaration, which covers Lot 3976, was issued for the year 2005 and canceled Tax Declaration No. E-008-18821, also under the name of Ricardo Marcelo. Other than said tax declaration, however, we found nothing in the records of these cases to show that the spouses Marcelo have been consistently paying taxes on Lot 3976. We note that Tax Declaration No. E-008-19942 was issued fairly recently, and by itself, is inadequate to convince the Court that the spouses Marcelo have been in open, continuous and exclusive possession of the subject portions of Lot 3976, by themselves or through a successor-in-interest, since January 3, 1968. More importantly, it is ingrained in our jurisprudence that the mere declaration of a land for taxation purposes does not constitute possession thereof nor is it proof of ownership in the absence of the claimant's actual

possession. Considering that the Silverios are in actual possession of the subject portions of Lot 3976, they are entitled to remain on the property until a person who has a title or a better right lawfully ejects them.

SERENO, *C.J., concurring and dissenting opinion:*

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM-SHOPPING; DEFINED; ELEMENTS THAT MUST CONCUR FOR FORUM SHOPPING TO EXIST.— [W]e have defined forum-shopping as the act of a party, against whom an adverse judgment has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or a special civil action for *certiorari*, or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. For forum-shopping to exist, the following elements must be present: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

2. ID.; ID.; ID.; FORUM-SHOPPING, NOT A CASE OF; WHERE THE PARTIES ENTERED INTO SEPARATE CONTRACTS INVOLVING TWO DISTINCT HOUSES BOTH LOCATED IN A PARCEL OF LAND, FILING OF SEPARATE CASES DOES NOT CONSTITUTE FORUM-SHOPPING.— On their face, the two Complaints filed by Sps. Marcelo seem to have an overwhelming identity of elements, for in both cases, the right to which they hinge their claim is their purported ownership of Lot No. 3976. This fact, however, cannot be used as ammunition to insist on a supposed violation of the rule on forum-shopping. It is clear that the parties entered into two separate contracts, thus signifying that there are also two separate causes of action. In examining the two causes of action, we must compare the contracts entered into by the parties. In G.R. No. 184079, Sps. Marcelo alleged that Sps. Silverio were allowed to construct a house on Lot No. 3976 sometime in May 1987, on the condition that the latter would vacate the property

the moment the former would need it. Meanwhile, in G.R. No. 184490, Sps. Marcelo also alleged that Sps. Silverio were allowed to stay in **another house** built in 1986 by Florante Marcelo and Marilou Silverio (but abandoned sometime in 1998), with the understanding that the house would be dismantled the moment Sps. Marcelo would need the premises. Needless to say, the ownership of the entire Lot No. 3976 is immaterial. In each case, the contractual relations of the parties are confined only to certain portions of Lot No. 3976. x x x There is merit in the contention that this situation may be akin to that of condominium units, in which the owner-developer is given the right to eject each tenant separately. The rights and duties of both parties need not be reduced to a written contract, as long as the terms remain clear - that Sps. Silverio should vacate the two houses once Sps. Marcelo decided to use them. It therefore follows that there is no *res judicata*, for the finding of ownership in favor of Sps. Marcelo relegates their right to possess only the specific area, subject of each case.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE ONLY ISSUE IS PHYSICAL POSSESSION; PARTIES WHO HAVE PROVEN ACTUAL POSSESSION HAVE A BETTER RIGHT TO REMAIN IN THE PROPERTY; RATIONALE.— [W]ell-settled is the rule that in an ejectment suit, the only issue is possession *de facto* or physical or material possession, and not possession *de jure*. So that even if the question of ownership is raised in the pleadings, as in this case, the court may pass upon such issue but only to determine the question of possession, especially if the former is inseparably linked with the latter. x x x It is not denied that Sps. Silverio are currently in actual possession of the area in Lot No. 3976 where the two houses stand, while Sps. Marcelo occupy only 50 square meters thereof. This has been the situation for more than 30 years. Thus, absent any party claiming to have a better right to lawfully eject them, Sps. Silverio ought to remain on the property. x x x The rationale behind this ruling was already explained by the Court: "It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order." In fact, even a wrongful

possessor may at times be upheld by the courts, though only temporarily and for the purpose of maintaining public order. The larger and permanent interests of property require that in such rare and exceptional instance, the courts must give preference to and permit actual but wrongful possession.

4. CIVIL LAW; PUBLIC LANDS; THE SUBJECT LAND REMAINS A PUBLIC LAND AND WITHOUT REGISTERED OWNER.— [P]ublic lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private person by the State, remain part of the inalienable public domain. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration, who must prove that the land subject of the application is alienable or disposable. Failure of the applicant to overcome this threshold retains the property within the public realm. As clarified on record, Lot No. 3976 is still a public land, and no land patent has been issued over it as a whole or over any portion thereof. The unnumbered MSA filed by Sps. Marcelo on 30 September 1991 has already been cancelled by the DENR in a Decision dated 11 July 2007 for violating Section 2 of Republic Act No. 730, and for not complying with the requirements of Commonwealth Act No. 141. Hence, the lot has no registered owner.

APPEARANCES OF COUNSEL

Pasay City Lawyers Association for Spouses Marcelo.
Lopez Rance Aldea & Associates for Sps. Silverio.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court are twin petitions for review on *certiorari* under Rule 45 of the *1997 Rules of Civil Procedure*, as amended.

The petition[1] in G.R. No. 184079 was filed by petitioners spouses Armando Silverio, Sr. and Remedios Silverio to assail

[1] *Rollo* (G.R. No. 184079), pp. 18-49.

the Decision[2] dated March 18, 2008 and Resolution[3] dated August 12, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 98105. The CA had affirmed the Decision[4] dated November 7, 2006 of the Regional Trial Court (RTC) of Parañaque City, Branch 258, in Civil Case No. 06-0099, which in turn, affirmed the Decision[5] dated September 6, 2005 of the Metropolitan Trial Court (MeTC), Branch 78 in Civil Case No. 2004-271. The Parañaque MeTC, Branch 78, had ordered petitioners to demolish the improvements they have introduced in Lot No. 3976, Parañaque Cad. 299 (Lot 3976), to peacefully surrender possession of the same to respondents spouses Ricardo and Evelyn Marcelo and to pay ₱1,000 per month from May 20, 2004 until they have done so. The court *a quo* likewise directed petitioners to pay respondents ₱20,000 as attorney's fees plus ₱3,000 per appearance of the latter's counsel and costs.

Meanwhile, the petition[6] in G.R. No. 184490 was filed by petitioners spouses Evelyn and Ricardo Marcelo to contest the Decision[7] dated March 27, 2008 and Resolution[8] dated September 1, 2008 of the CA in CA-G.R. SP No. 98713. The CA had reversed and set aside the Decision[9] dated December 29, 2006 of the RTC of Parañaque City, Branch 257, in Civil Case No. 06-0237, which in turn, affirmed *in toto* the Decision[10]

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[2] *Id.* at 53-66. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta concurring.

[3] *Id.* at 67-68.

[4] *Id.* at 111-113. Penned by Judge Raul E. De Leon.

[5] *Id.* at 114-117. Penned by Executive Judge Jansen R. Rodriguez.

[6] *Rollo* (G.R. No. 184490), pp. 6-49.

[7] *Id.* at 108-125. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid concurring.

[8] *Id.* at 127-132. Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Hakim S. Abdulwahid and Noel G. Tijam concurring.

[9] *Id.* at 78-84. Penned by Judge Rolando G. How.

[10] *Rollo* (G.R. No. 184079), pp. 480-483. Penned by Judge Donato H. De Castro.

dated April 25, 2006 of the MeTC of Parañaque City, Branch 77, in Civil Case No. 2004-269. The Parañaque MeTC, Branch 77, had ordered respondents Armando Silverio, Sr. and Remedios Silverio to vacate the Marcelo Compound in Lot 3976 and to surrender possession thereof to petitioners. The court *a quo* likewise directed respondents to pay petitioners ₱1,000 per month from May 20, 2004 until they have completely moved out of said property, ₱10,000 as attorney's fees and costs.

The factual antecedents of these consolidated petitions are culled from the records.

G.R. No. 184079

On July 12, 2004, respondents spouses Ricardo and Evelyn Marcelo filed a Complaint[11] for unlawful detainer against petitioners spouses Armando Silverio, Sr., and his mother, Remedios Silverio. The case was docketed as Civil Case No. 2004-271 before the MeTC of Parañaque City, Branch 78.

Respondents represented themselves as the lawful owners and possessors of Lot 3976, a residential land with an area of 5,004 square meters located in Marcelo Compound, Philip St. Ext., Multinational Village, Parañaque City. They claimed ownership over said lot by virtue of a Decision[12] dated December 12, 1996 of the Department of Environment and Natural Resources (DENR) in DENR-NCR Case No. 95-253 and Tax Declaration No. E-008-19942.[13]

Respondents alleged that sometime in May 1987, petitioners sought permission to construct a house within Lot 3976. Respondents agreed on the condition that petitioners will vacate the moment they need the land. Subsequently, respondents made an oral demand on petitioners to leave the house and return possession of the lot within 15 days from notice. In a

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[11] *Id.* at 118-121.

[12] *Id.* at 301-327.

[13] *Id.* at 328.

Letter[14] dated May 18, 2004, respondents reiterated their demand for petitioners to demolish the house, vacate the 120-square-meter lot on which the house stands and to pay ₱1,000 as rent until they have done so.

As respondents' demands remained unheeded, they filed a complaint for unlawful detainer against petitioners before *Barangay* Moonwalk in Parañaque City. The case was docketed as *Barangay* Case No. 05/04-051. On July 24, 2004, Atty. Wendell E. Coronel, *Lupon*/*Pangkat* Secretary of Barangay Moonwalk issued a Certification to File Action[15] in said case upon the reasons "Failed or refused to accept/obey summons to appear for hearing" and "Settlement has been repudiated."

In their Answer,[16] petitioners sought the dismissal of the complaint on the ground that respondents had filed a similar case against them before the MeTC of Parañaque City, Branch 77, docketed as Civil Case No. 2004-269. The latter case is the subject of the petition in G.R. No. 184490.

On September 6, 2005, the MeTC of Parañaque City, Branch 78, rendered judgment in favor of respondents Marcelo. The court *a quo* ruled out forum shopping upon finding that the house subject of the present case is different from that in Civil Case No. 2004-269. The structure involved in the latter case was "originally occupied by [petitioners'] relative and later taken over by [them]"[17] while the house subject of the present case was constructed by petitioners themselves. The MeTC held that petitioners failed to refute the character of their possession as merely tolerated by respondents and they became deforciants upon the latter's demand for them to vacate the subject premises. The court ordered petitioners to pay respondents ₱1,000 as reasonable compensation for the use and occupation of the premises, attorney's fees of ₱20,000 and ₱3,000 per appearance of counsel for respondents.

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[14] *Rollo* (G.R. No. 184490), p. 64.

[15] *Id.* at 56-A.

[16] *Rollo* (G.R. No. 184079), pp. 122-123.

[17] *Id.* at 115.

On appeal, the Parañaque RTC, Branch 258, affirmed the ruling of the MeTC. In a Decision dated November 7, 2006, the RTC sustained respondents' right to bring action to evict petitioners from the contested property. It found petitioners' claim of ownership unsubstantiated and their defense of forum shopping without merit since the properties involved in Civil Case Nos. 2004-269 and 2004-271 are different from each other.

Petitioners moved for reconsideration but their motion was denied in an Order[18] dated February 5, 2007. Thereafter, petitioners filed a Petition for Review[19] under Rule 42 of the Rules with the CA.

In the assailed Decision dated March 18, 2008, the appellate court affirmed *in toto* the RTC judgment. It found no basis to dismiss respondents' complaint based on either forum shopping or splitting a cause of action. The CA disregarded petitioners' argument that the subject property is public land in view of their admission in their Answer[20] that respondents are the owners and possessors thereof.

Petitioners filed a Motion for Reconsideration[21] which the CA denied in a Resolution[22] dated August 12, 2008.

G.R. No. 184490

On July 12, 2004, petitioners spouses Ricardo and Evelyn Marcelo filed a Complaint[23] for unlawful detainer against respondents Armando Silverio, Sr., and Remedios Silverio. The case was docketed as Civil Case No. 2004-269 before the MeTC of Parañaque City, Branch 77.

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[18] *Id.* at 174.

[19] CA *rollo* (CA-G.R. SP No. 98105), pp. 8-31.

[20] *Rollo* (G.R. No. 184079), pp. 122-123.

[21] *Id.* at 69-76.

[22] *Id.* at 67-68.

[23] *Rollo* (G.R. No. 184490), pp. 50-54.

Petitioners' Complaint bore essentially the same allegations as their Complaint in Civil Case No. 2004-271 save for two allegations: (1) respondents requested petitioners' permission to construct a house in Lot 3976 *in May 1986*; and (2) respondents "*improved the house and even operated a sari-sari store*"[24] in Marcelo Compound.

In their Answer[25] dated August 3, 2004, respondents belied petitioners' claim of exclusive ownership and possession of the subject property. According to respondents, the land in dispute was first occupied by Graciano Marcelo along with his sons Armando Marcelo, petitioner Ricardo Marcelo and Florante Marcelo. Respondents anchor their right of possession on Florante Marcelo, in his capacity as an ostensible co-owner of the contested property. Florante Marcelo is the husband of Marilou Silverio, the daughter of respondents spouses Silverio.

Subsequently, petitioners submitted an Amended Complaint[26] dated August 14, 2004, in which they clarified that it was the spouses Florante Marcelo and Marilou Silverio, and not the respondents, who sought their consent to build a house and live in Marcelo Compound. Petitioners recounted that it was after Florante Marcelo and Marilou Silverio separated in 1998 and abandoned said house that respondents asked for permission to stay therein. Petitioners agreed upon an understanding that respondents shall "dismantle said house the moment [petitioners] need the premises."[27] However, respondents refused to move out and surrender possession of the subject property upon demand.

In a Demand Letter[28] dated May 18, 2004, petitioners insisted on their demand for respondents to demolish the house they built, vacate the 80-square-meter lot on which it stands, to surrender peaceful possession of the same and to pay ₱1,000 as rent until they have done so.

[24] *Id.* at 51.

[25] Records, Vol. 2, pp. 12-13.

[26] *Rollo* (G.R. No. 184490), pp. 69-73.

[27] *Id.* at 70.

[28] *Id.* at 75.

As respondents ignored petitioners' demands, the latter brought a complaint for unlawful detainer against respondents before *Barangay* Moonwalk in Parañaque City. The case was docketed as *Barangay* Case No. 05/04-070. On July 24, 2004, Atty. Wendell E. Coronel, Lupon/Pangkat Secretary of Barangay Moonwalk issued a Certification to File Action[29] in said case upon the reasons "Failed or refused to accept/obey summons to appear for hearing" and "Settlement has been repudiated."

In an Answer[30] dated September 8, 2004, respondents assailed the DENR Decision dated December 12, 1996 for supposedly awarding ownership of the subject property to petitioners. According to respondents, Graciano Marcelo, Sr., petitioner Ricardo Marcelo's father, was a tenant of Fabian Lumbos before the latter sold his land to Mike Velarde. Subsequently, Velarde fenced the subject property, which respondents insist is not part of the parcels that Lumbos sold to Velarde. Upon the belief that Lot 3976 is still government property, the sons of Graciano Marcelo, Sr., including petitioner Ricardo Marcelo and Florante Marcelo, divided the land among themselves and occupied the same. On the tract allotted to Florante, he took in respondent Remedios Silverio to live with him and his wife, Marilou.

Respondents averred that it was in 1997 when the Marcelos conceived the idea of applying for a sales patent over Lot 3976 with the DENR. The Marcelo siblings appointed petitioner Ricardo Marcelo to file the Miscellaneous Sales Application (MSA) in their behalf, sharing the expenses among themselves. However, it was not until later that the Marcelo siblings learned that Ricardo had filed the application in his name alone. Respondents revealed that Ricardo had sold several portions of Lot 3976 even before he could apply for a sales patent thereon.

On February 3, 2005, respondents filed a Supplemental Answer[31] in which they charged petitioners with forum shopping

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[29] *Id.* at 66.

[30] CA *rollo* (CA-G.R. SP No. 98713), pp. 52-54.

[31] *Id.* at 65-66.

for filing another ejectment case against them, docketed as Civil Case No. 2004-271 before Branch 78 of the Parañaque MeTC.

In a Decision dated April 25, 2006, the MeTC of Parañaque City, Branch 77, ruled for petitioners Marcelo. The court *a quo* ordered respondents to vacate the subject property, to surrender peaceful possession thereof to petitioners, to give reasonable rent from May 20, 2004 until they have moved out and to pay attorney's fees and costs.

On the basis of the Decision dated December 12, 1996 of the DENR, the MeTC declared petitioners the owners of the subject property, with concomitant right to possess it. The court found no evidence to support respondents' possessory claim and considered their occupation of the subject land as merely tolerated by petitioners. The court *a quo* discounted forum shopping upon finding that the house concerned in Civil Case No. 2004-271 was built by petitioners whereas the house in this case was only taken over by them.

In a Decision dated December 29, 2006, the Parañaque RTC, Branch 257, affirmed *in toto* the MeTC ruling. The RTC declared petitioners as the lawful possessors of the subject property by virtue of Tax Declaration No. E-008-19942 in the name of petitioner Ricardo Marcelo. It explained that Florante Marcelo's affinity with petitioner Ricardo, alone, did not automatically make him a co-owner of the contested property.

Dissatisfied, respondents elevated the case to the CA through a petition[32] for review under Rule 42.

In the assailed Decision dated March 27, 2008, the CA reversed and set aside the RTC judgment. It brushed aside the alleged procedural infirmities that attended the filing of respondents' petition for being trivial and insufficient to warrant its dismissal. The appellate court found petitioners guilty of forum shopping and splitting of a cause of action. It observed

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[32] *Id.* at 7-31.

that the two cases for unlawful detainer filed by petitioners are based on a single claim of ownership over Lot 3976 which embraces the subject properties. The CA explains that an adjudication in either suit that petitioners are entitled to the possession of Lot No. 3976 would necessarily mean *res judicata* in the other case. The appellate court noted that the demand letter in both cases was served on respondents on the same day.

Issues/Assignment of Errors

On September 29, 2008, spouses Armando Silverio, Sr. and Remedios Silverio filed a petition for review on *certiorari* which was docketed as G.R. No. 184079. Said petition, which seeks to reverse and set aside the Decision dated March 18, 2008 and Resolution dated August 12, 2008 of the CA in CA-G.R. SP No. 98105, assigns a lone error:

THE COURT OF APPEALS, WITH ALL DUE RESPECT, SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN DISMISSING THE APPEAL INTERPOSED BY PETITIONERS IN THE ABOVE-ENTITLED CASE ON TECHNICALITIES AND HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT, AND/OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT.[33]

A few days later, on October 2, 2008, spouses Evelyn and Ricardo Marcelo filed a Petition for Review on *Certiorari* which was docketed as G.R. No. 184490. Said petition, in turn, contests the Decision dated March 27, 2008 and the Resolution dated September 1, 2008 of the CA in CA-G.R. SP No. 98713. Condensed, the issues presented by petitioners are as follows: (1) Whether the filing of separate complaints for unlawful detainer against the same lessees who refuse to vacate, on demand, two different houses constitutes forum shopping and splitting of a cause of action; (2) Whether the CA erred in dismissing

[33] *Rollo* (G.R. No. 184079), p. 37.

Civil Case No. 2004-269; and (3) Whether the instant petition was filed seasonably.

Essentially, the questions that must be addressed in the consolidated petitions before us are common: (1) Are the spouses Ricardo and Evelyn Marcelo guilty of forum shopping? and (2) Who between the spouses Marcelo and the Silverios have better right to the physical possession of Lot 3976?

The Parties' Arguments

Armando Silverio, Sr. and Remedios Silverio allege mainly that spouses Ricardo and Evelyn Marcelo engaged in forum shopping and split a common cause of action when they filed separate complaints for unlawful detainer based on a single claim of ownership over Lot No. 3976. The Silverios maintain that the spouses Marcelo are simply applicants for the issuance of a sales patent over Lot No. 3976 and are actually occupying only 50 square meters of the 5,020-square-meter property. In support thereof, the Silverios invoke the Decision[34] dated July 11, 2007 of the DENR which annulled and canceled the MSA filed by the spouses Marcelo over Lot No. 3976. Ultimately, the Silverios insist that the subject property remains a public land.

In their consolidated Memorandum[35] for G.R. Nos. 184079 and 184490, spouses Ricardo and Evelyn Marcelo denied the allegations of forum shopping and splitting a single cause of action. They assert the following distinctions between the houses involved in Civil Case Nos. 2004-269 and 2004-271: (1) the house in Civil Case No. 2004-271 was built by the Silverios in May 1987 while the house subject of Civil Case No. 2004-269 was constructed by Florante Marcelo and Marilou Silverio in May 1986; and (2) the house in Civil Case No. 2004-271 has been occupied by the Silverios from the beginning while they merely took over the house referred to in Civil Case No. 2004-269 and put up a *sari-sari* store therein. The spouses Marcelo

[34] *Id.* at 95-110.

[35] *Id.* at 449-479.

contend that while they claim ownership of Lot No. 3976 as a whole, the portions thereof on which the two houses stand are distinct — one has an area of 80 square meters while the other measures 120 square meters. In view of this, the spouses Marcelo believe that the refusal by the Silverios to vacate said houses violated at least two rights and gave rise to separate causes of action.

The Court's Ruling

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess.[36] In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.[37]

Here, the spouses Ricardo and Evelyn Marcelo brought separate complaints for unlawful detainer against Armando Silverio, Sr. and Remedios Silverio based on their refusal to vacate two houses inside the Marcelo Compound. In both Civil Case Nos. 2004-269[38] and 2004-271, the spouses Marcelo anchor their right of possession over the subject properties on Tax Declaration No. E-008-19942 and on the Decision dated December 12, 1996 of the DENR in DENR-NCR Case No. 95-253. The DENR gave due course to the MSA filed by the

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[36] *Corpuz v. Agustin*, G.R. No. 183822, January 18, 2012, 663 SCRA 350, 362.

[37] *Barrientos v. Rapal*, G.R. No. 169594, July 20, 2011, 654 SCRA 165, 171.

[38] *Rollo* (G.R. No. 184490), pp. 50-51.

spouses Marcelo over Lot 3976, where the Marcelo Compound is situated.

For their part, the Silverios seek the dismissal of both complaints on the grounds of forum shopping and splitting a single cause of action.

Forum shopping is a deplorable practice of litigants consisting of resort to two different *fora* for the purpose of obtaining the same relief, to increase the chances of obtaining a favorable judgment.[39] The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions.[40]

In *Chua v. Metropolitan Bank & Trust Company*,[41] the Court enumerated the ways by which forum shopping may be committed:

> Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata);* and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[42]

Common to these types of forum shopping is the identity of the cause of action in the different cases filed. Cause of action is defined as "the act or omission by which a party violates the right of another."[43]

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[39] *Dy v. Mandy Commodities Co., Inc.*, G.R. No. 171842, July 22, 2009, 593 SCRA 440, 450.

[40] *Id.*

[41] G.R. No. 182311, August 19, 2009, 596 SCRA 524.

[42] *Id.* at 535-536.

[43] *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011, 645 SCRA 205, 215.

In this case, the spouses Marcelo filed two cases for unlawful detainer against Armando Silverio, Sr. and Remedios Silverio on July 12, 2004. In Civil Case No. 2004-269, the cause of action is the alleged unlawful withholding of possession by the Silverios of the house which Florante Marcelo and Marilou Silverio constructed in Lot 3976. On the other hand, the cause of action in Civil Case No. 2004-271 for unlawful detainer is the supposed unlawful withholding of possession by the Silverios of the house which they, themselves, built in Lot 3976. While the main relief sought in Civil Case No. 2004-269 appears to be different from that in Civil Case No. 2004-271, the right on which both claims are hinged is the same – the purported ownership by the spouses Marcelo of Lot 3976. Indeed, paragraph 3 of the spouses Marcelo's Complaint in both cases similarly read:

> 3. Plaintiffs are the lawful owners and possessors of a residential lot containing an area of 5,004 sq. m. known as Lot 3976 Parañaque Cad. 299 by virtue of a final and executory decision of the [Land] Management Bureau (DENR) promulgated on Dec. 12, 1996 and Tax Dec. No. E-008-083-77 issued in their name by the City Assessor of Parañaque City. Certified true copy of Tax Dec. No. E-008-19942 is hereto attached as "*Annex "A*".[44]

Basically, the cause of action in both cases is the unlawful withholding by the Silverios of Lot 3976.

We find no merit in the contention of the spouses Marcelo that Civil Case Nos. 2004-269 and 2004-271 present distinct causes of action since they pertain to separate portions of the Marcelo Compound. The analogy drawn by the spouses Marcelo between the ejectment of a tenant leasing several units of a condominium project and the unlawful detainer cases they brought against the Silverios is misplaced. In the former, there exists a lessor-lessee relationship between the owner of the condominium and the tenant, respectively. Hence, the rights and duties of the condominium owner and the tenant are defined

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[44] *Rollo* (G.R. No. 184079), pp. 118-119; *rollo* (G.R. No. 184490), pp. 50-51.

by the terms of the contract. In contrast, the parties in this case present adverse possessory claims over those portions of Lot 3976 in which the houses concerned are situated.

In particular, the spouses Marcelo assert better right of possession based on their alleged right as "lawful owners and possessors of a residential lot containing an area of 5,004 sq. m. known as Lot 3976 Parañaque Cad. 299 by virtue of a final and executory decision of the [Land] Management Bureau (DENR) promulgated on Dec. 12, 1996 and Tax Dec. No. E-008-083-77 issued in their name by the City Assessor of Parañaque."[45] For their part, the Silverios claim better right of possession on account of their actual occupation of the subject properties. In either case, a finding that the spouses Marcelo have better right to possess the subject property could only be premised on their lawful possession of the entire Lot No. 3976, Parañaque Cad. 299. It follows, therefore, that a final adjudication in favor of the spouses Marcelo in one case would constitute *res judicata* in the other.

In *Agustin v. Delos Santos*,[46] the Court cited three tests to verify whether there is identity of causes of action for purposes of applying the principle of *res judicata*. The first test is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions.[47] The more common approach in ascertaining identity of causes of action is the "same evidence test," whereby the following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?" If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not.[48] Aside from the "absence of inconsistency test" and "same evidence test," we have also

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[45] *Id.*; *id.*

[46] G.R. No. 168139, January 20, 2009, 576 SCRA 576.

[47] *Id.* at 588-589.

[48] *Id.* at 590.

ruled that a previous judgment operates as a bar to a subsequent one when it had touched on a matter already decided, or if the parties are in effect "litigating for the same thing."[49]

The "absence of inconsistency test" finds no application in this case since it presupposes that a final judgment has been rendered in the first case. By applying the "same evidence test," however, it becomes apparent that the proof necessary to obtain affirmative relief in Civil Case No. 2004-269 is the same as that in Civil Case No. 2004-271. Since the spouses Marcelo are claiming sole ownership of Lot 3976 in their MSA, the evidence needed to establish better right of possession over the house constructed by Florante Marcelo and Marilou Silverio, and the one built by the Silverios is the same, regardless of the fact that they were built on separate portions of said lot. We have ruled time and again that "a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated."[50]

Evidently, the spouses Marcelo engaged in forum shopping by filing separate cases for unlawful detainer based on a single claim of ownership over Lot 3976. Said act is likewise tantamount to splitting a cause of action which, in this case, is a cause for dismissal on the ground of *litis pendentia*. On this score alone, the petition for review on *certiorari* filed by the spouses Marcelo in G.R. Nos. 184490 must fail, alongside their averments in G.R. No. 184079.

In any case, even if we confront the issue as to who between the spouses Marcelo and the Silverios have better right of possession over the subject properties, the former would still not prevail.

As earlier stated, the DENR-NCR had canceled the MSA filed by the spouses Marcelo in its Decision[51] dated July 11,

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[49] *Id.* at 591.

[50] *Asia United Bank v. Goodland Company, Inc.*, *supra* note 43, at 217.

[51] *Supra* note 34.

2007. The Department found that the spouses Marcelo failed to satisfy the requirements for the acquisition of Lot 3976 under the Public Land Act. The DENR-NCR clarified that the Decision dated December 12, 1996 gave due course to the application, not only of the spouses Marcelo, but also those of other applicants. It gave weight to the findings in the ocular inspection that the spouses Marcelo are actually occupying only 50 square meters of Lot 3976 while the remaining portions are inhabited by 111 families. The DENR-NCR adds that the spouses Marcelo cannot claim the entire Lot No. 3976 since Republic Act No. 730[52] limits the area of land that may be applied for to 1,000 square meters.[53] In conclusion, the DENR-NCR held that Lot 3976 remains a public land and its dwellers may apply for the purchase of those portions that they are actually occupying.

Factual considerations relating to lands of the public domain properly rest within the administrative competence of the Director of Lands and the DENR. Findings of administrative agencies, which have acquired expertise because of their jurisdiction, are confined to specific matters and are accorded respect, if not finality, by the courts. Even if they are not binding to civil courts exercising jurisdiction over ejectment cases, such factual

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[52] AN ACT TO PERMIT THE SALE WITHOUT PUBLIC AUCTION OF PUBLIC LANDS OF THE REPUBLIC OF THE PHILIPPINES FOR RESIDENTIAL PURPOSES TO QUALIFIED APPLICANTS UNDER CERTAIN CONDITIONS.

[53] SECTION 1. Notwithstanding the provisions of Sections sixty-one and sixty-seven of Commonwealth Act Numbered One hundred forty-one, as amended by Republic Act Numbered Two hundred ninety-three, any Filipino citizen of legal age who is not the owner of a home lot in the municipality or city in which he resides and who has in good faith established his residence on a parcel of the public land of the Republic of the Philippines which is not needed for the public service, shall be given preference to purchase at a private sale of which reasonable notice shall be given to him not more than one thousand square meters at a price to be fixed by the Director of Lands with the approval of the Secretary of Agriculture and Natural Resources. It shall be an essential condition of this sale that the occupants has constructed his house on the land and actually resided therein. Ten percent of the purchase price shall be paid upon the approval of the sale and the balance may be paid in full, or in ten equal annual installments.

findings deserve great consideration and are accorded much weight.[54]

Nonetheless, the declaration by the DENR-NCR that Lot 3976 is still part of the public domain does not mean that neither of the parties is entitled to the possession of the subject properties. In *Pajuyo v. Court of Appeals*,[55] we reiterated the policy behind the summary action of forcible entry and unlawful detainer, thus:

> It must be stated that the purpose of an action of forcible entry and detainer is that, regardless of the actual condition of the title to the property, the party in peaceable quiet possession shall not be turned out by strong hand, violence or terror. In affording this remedy of restitution the object of the statute is to prevent breaches of the peace and criminal disorder which would ensue from the withdrawal of the remedy, and the reasonable hope such withdrawal would create that some advantage must accrue to those persons who, believing themselves entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims. This is the philosophy at the foundation of all these actions of forcible entry and detainer which are designed to compel the party out of possession to respect and resort to the law alone to obtain what he claims is his.[56]

The parties in *Pajuyo* were informal settlers on the public land which was the subject of said case. We ruled that since the government, which has title or better right over the property was not impleaded in the case, the Court cannot, on its own, evict the parties. We recognized better right of possession in favor of the petitioner therein who began occupying the disputed property ahead of the respondents in said case.

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[54] *Estrella v. Robles, Jr.*, G.R. No. 171029, November 22, 2007, 538 SCRA 60, 76.

[55] G.R. No. 146364, June 3, 2004, 430 SCRA 492.

[56] *Id.* at 515-516, citing *Drilon v. Gaurana*, No. L-35482, April 30, 1987, 149 SCRA 342, 348.

A case with parallel factual milieu is *Modesto v. Urbina*.[57] Like the spouses Marcelo, the respondents in said case relied on a MSA and tax declarations to substantiate their claim of possession over the contested land therein. In ruling for the petitioners in said case, the Court stressed that the mere declaration of land for taxation purposes does not constitute possession thereof nor is it proof of ownership in the absence of the claimant's actual possession.[58] We explained that unless a public land is shown to have been reclassified as alienable or actually alienated by the State to a private person, that piece of land remains part of the public domain, and its occupation, in the concept of owner, no matter how long, cannot confer ownership or possessory rights.[59] This finds support in Section 88 of the Public Land Act, which provides:

Section 88. The tract or tracts of land reserved under the provisions of Section eighty-three shall be non-alienable and shall not be subject to occupation, entry, sale, lease, or other disposition until again declared alienable under the provisions of this Act or by proclamation of the President.

In a Certification[60] dated June 8, 2006, Samson G. de Leon, the Regional Technical Director for Lands of the DENR-NCR stated that:

This is to certify that Lot 3976 Cad 299, Parañaque Cadastre situated at San Dionisio, Parañaque, Metro Manila, containing an area of 5,027.00 square meters has been verified based on available records of this Office to be under Project No. 25, classified as **Alienable or Disposable Public Land**, certified as such on **3 January 1968** per BFD L.C. Map No. 2323.

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This is to further certify that as per Certification dated 15 December 2005 issued by Records Officer II Anita B. Ibardolasa which is hereto attached, **no land patent has been issued over the same or any portion thereof**.

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[57] G.R. No. 189859, October 18, 2010, 633 SCRA 383.

[58] *Id.* at 402.

[59] *Id.* at 400.

[60] Records, Vol. 3, p. 719.

x x x x. (Emphasis supplied.)

It is undisputed by the spouses Marcelo that the Silverios presently occupy those portions of Lot 3976 which are the subjects of the consolidated petitions before us. In particular, the Silverios tie their possession of the parcel at issue in G.R. No. 184490 to Florante Marcelo who appropriated a portion of Lot 3976 for himself, and with his wife, constructed a house thereon in 1986. As regards the portion of Lot 3976 subject of G.R. No. 184079, the Silverios have established their dwelling thereon in 1987 - long after Lot 3976 was classified as alienable and disposable public land on January 3, 1968.

Meanwhile, the spouses Marcelo insist on their better right to possess the contested parcels as holders of Tax Declaration No. E-008-19942 in the name of Ricardo Marcelo. Said tax declaration, which covers Lot 3976, was issued for the year 2005 and canceled Tax Declaration No. E-008-18821, also under the name of Ricardo Marcelo. Other than said tax declaration, however, we found nothing in the records of these cases to show that the spouses Marcelo have been consistently paying taxes on Lot 3976. We note that Tax Declaration No. E-008-19942 was issued fairly recently, and by itself, is inadequate to convince the Court that the spouses Marcelo have been in open, continuous and exclusive possession of the subject portions of Lot 3976, by themselves or through a successor-in-interest, since January 3, 1968. More importantly, it is ingrained in our jurisprudence that the mere declaration of a land for taxation purposes does not constitute possession thereof nor is it proof of ownership in the absence of the claimant's actual possession.[61]

Considering that the Silverios are in actual possession of the subject portions of Lot 3976, they are entitled to remain on the property until a person who has a title or a better right lawfully ejects them. The ruling in this case, however, does not preclude the Silverios and the spouses Marcelo from introducing evidence and presenting arguments before the proper administrative agency

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[61] *Modesto v. Urbina*, *supra* note 57, at 402.

to establish any right to which they may be entitled under the law.[62]

WHEREFORE, the Court **RESOLVES**:

(1) To **GRANT** the petition in G.R. No. 184079. The Decision dated March 18, 2008 and Resolution dated August 12, 2008 of the Court of Appeals in CA-G.R. SP No. 98105 are **REVERSED and SET ASIDE**;

(2) To **DENY** the petition in G.R. No. 184490. Consequently, the Decision dated March 27, 2008 and Resolution dated September 1, 2008 of the Court of Appeals in CA-G.R SP No. 98713 are **AFFIRMED**; and

(3) To **DISMISS** the complaints for unlawful detainer filed by the spouses Ricardo and Evelyn Marcelo against Armando Silverio, Sr. and Remedios Silverio for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

Sereno, C.J. (Chairperson), see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

SERENO, *C.J.*:

Given the factual circumstances of these cases, I respectfully dissent from the finding that there is forum shopping, but *concur* with the ruling that Lot No. 3976 remains a public land.

As culled from the records, Lot No. 3976 is a property located in Philips St. Extension, Multinational Village, Barangay Moonwalk, Paranaque City, having an area of 5,020 square meters.[1] It was first thought to be part of a vast tract of land in Matatdo, Wawa, Paranaque, Rizal (Matatdo property), owned by Pedro

[62] See *Pajuyo v. Court of Appeals*, *supra* note 55, at 523.

[1] *Rollo* (G.R. No. 184079), p. 95; DENR Decision dated 11 July 2007, p. 1.

Lumbos and tenanted by Graciano Marcelo, Sr.[2] When the entire Matatdo property was bought by a certain Mike Velarde, he developed it into what is now popularly known as the Multinational Village.[3] As part of the development, the Matatdo property was subjected to a resurvey, during which it was found out that Lot No. 3976 did not form part of the property bought by Mike Velarde and hence, is a public, alienable and disposable land.[4] This finding was confhmed by a Certification issued by the Department of Environment and Natural Resources (DENR) that on 3 January 1968, Lot No. 3976 had been classified as "Alienable or Disposable Public Land" per BFD L.C. Map No. 2323.[5] Consequently, Graciano Marcelo, Sr. and his heirs occupied and took actual possession of Lot No. 3976.[6]

On 30 September 1991, Spouses Ricardo and Evelyn Marcelo (Sps. Marcelo), as heirs of Graciano Marcelo, Sr., filed an unnumbered Miscellaneous Sales Application (MSA) with the DENR.[7] Prior to and pending the approval of the MSA, they had already been disposing of Lot No. 3976 by way of several Sales Contracts,[8] even without having formalized their ownership of the lot. As a result, the number of actual occupants of Lot No. 3976 increased. As of date, Sps. Marcelo occupy an area of approximately 50 square meters, while the remaining portions of Lot No. 3976 are occupied by 111 families. [9]

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[2] *Id.* at 96; DENR Decision dated 11 July 2007, p. 2.

[3] *Id.*

[4] *Id.*

[5] *Id.* at 189; DENR Certification dated 8 June 2006.

[6] *Id.* at 96; DENR Decision dated 11 July 2007, p. 2.

[7] *Id.* at 241; DENR Memorandum dated 13 February 2007, issued by Corazon C. Davis, Regional Executive Director, DENR-National Capital Region, p. 4.

[8] *Id.* at 105; DENR Decision dated 11 July 2007, p. 11. The Sales Contracts refer to those contracted with the following persons, among others: Rowena Lanozo on 11 February 1993; Edgardo Marquez on 14 April 1986; Mssrs. Virgilio Bering and Alejandro Biclar on 29 June 1990; Nazario Robles on 4 May 1992; and Sps. Romeo Sanchez on 14 May 1996.

[9] *Id.* at 239; DENR Memorandum dated 13 February 2007 issued by Corazon C. Davis, Regional Executive Director, DENR-National Capital Region, p. 2.

To legally acquire ownership of the portions of Lot No. 3976 that they were occupying, the occupants agreed among themselves to designate Ricardo Marcelo to file an MSA sometime in 1995. They contributed money and shared in the expenses for the application to prosper.[10] This MSA was opposed by the Heirs of Pedro Lombos, [11] resulting in a full-blown investigation and hearing by the DENR.

On 12 December 1996, the DENR rendered a Decision [12] in the following wise:

> WHEREFORE, premises considered, the Miscellaneous Sales Application/public land applications of Spouses Ricardo Marcelo *et al.*, should be, as it is hereby, GIVEN DUE COURSE, and the Opposition of Claimants-Oppositor Heirs of Pedro Lombos is DISMISSED for lack of merit.
>
> SO ORDERED.

In thus ruling, the DENR declared that Sps. Marcelo, through their predecessors-in-interest, had been "in possession/occupation of the lot in dispute since 1942 or time immemorial"[13] and hence, it was constrained to "grant subject Lot-3976, Cad-299, Paranaque Cadastre, Paranaque, Metro Manila, to Claimants-Applicants Ricardo Marcelo, *et al.*"[14]

By virtue of this Decision, Sps. Marcelo allegedly claimed exclusive ownership of the entire lot and filed several ejectment cases against the other occupants, including Spouses Remedios and Armando Silverio, Sr. (Sps. Silverio). [15]

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[10] *Id.* at 96-97; DENR Decision dated 11 July 2007, pp. 2-3.

[11] Docketed as *Ricardo Marcelo, et al., v. Heirs of Pedro Lombos, rep. by Atty. Fabian Lombos* under DENR-NCR Case No. 95-253, Re: Lot 3976, Cad-299, Parañaque, Metro Manila.

[12] *Rollo*, pp. 301-327. DENR Decision penned by OIC-Regional Executive Director Clarence L. Baguilat.

[13] *Id.* at 327; DENR Decision dated 12 December 1996, p. 27.

[14] *Id.*

[15] *Id.* at 97; DENR Decision dated 11 July 2007, p. 3.

In response, a Formal Protest was filed by the *Sitio* Philips Paranaque Neighborhood Association, Inc. against Sps. Marcelo on 11 October 2004.[16]

A Decision[17] thereon was issued by the DENR on 11 July 2007, to wit:

> **WHEREFORE, all the foregoing premises considered,** the Verified Protest filed on 11 October 2004 by Protestants, Sitio Philips Neighborhood Association, Inc., is hereby GRANTED with modifications. It is further ordered that:
>
> 1. The unnumbered Miscellaneous Sales Application of Protestees Spouses Ricardo and Evelyn Marcelo with respect to the Five Thousand Twenty square meters, should be, as it is hereby annulled and cancelled from the records;
>
> *2.* Protestees are only entitled to the area they are actually occupying, that is, fifty (50) square meters, as per the findings of the investigation and ocular inspection conducted on the controverted property and thus may file their miscellaneous sales application with respect thereof; and
>
> .3. Protestants may now file their application for the purchase of the land that they are occupying under miscellaneous sales. In connection therewith, the Regional Technical Director, Land Management Services, through the Chief, Land Management Division, is directed to evaluate the qualifications of the applicants *vis-a-vis* the applicable laws, rules and regulations thereon.
>
> **SO ORDERED.** (Emphases and underscoring in the original)

In its Decision, the DENR stressed that "what was given due course in the Decision of this Office dated 12 December 1996 were the land applications of the other actual occupants-claimants and the miscellaneous sales application of Spouses Ricardo and Evelyn Marcelo and which was filed on 30 September 1991, or prior to the commencement of the case

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[16] *Id.* at 189; DENR Certification dated 8 June 2006.

[17] *Id.* at 95-110; DENR Decision penned by Regional Executive Director Corazon C. Davis.

Ricardo Marcelo vs. Heirs of Lombos. However, Sps. Marcelo are only entitled to the portion they were actually occupying, as actual occupation is the basis of the grant, and the same cannot exceed One Thousand (1,000) square meters."[18]

Despite this clarification, Sps. Marcelo still pursued the ejectment cases they had earlier filed against the other occupants of Lot No. 3976. In particular, they filed two separate Complaints for unlawful detainer against the Sps. Silverio: (1) Civil Case No. 2004-271 (G.R. No. 184079) filed on 9 July 2004 before the Metropolitan Trial Court (MeTC), Paranaque City, Branch 78, involving a house which Sps. Silverio built on Lot No. 3976; and (2) Civil Case No. 2004-269 (G.R. No. 184490) filed on 14 August 2004 before the MeTC of Paranaque City, Branch 77, involving another house on Lot No. 3976 which the Sps. Silverio had taken over from their relatives. These were the cases that gave rise to the two conflicting Decisions issued by the Court of Appeals, subjects of this appeal.

Sps. Marcelo have not violated the rules on forum-shopping.

At the outset, we have defined forum-shopping as the act of a party, against whom an adverse judgment has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or a special civil action for *certiorari,* or the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. [19]

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[18] *Id.* at 108; DENR Decision dated 11 July 2007, p. 14.

[19] *HPS Software & Communication Corp. v. PLDT*, G.R. Nos. 170217 and 170694, 10 December 2012, citing *Metropolitan Bank and Trust Company v. International Exchange Bank*, G.R. Nos. 176008 & 176131, 10 August 2011, 655 SCRA 263, 274. See also *PHILPHARMAWEALTH, Inc. v. Pfizer, Inc. and Pfizer (Phils.), Inc.*, G.R. No. 167715, 17 November 2010, 635 SCRA 140; *Philippine Islands Corporation for Tourism Development, Inc. v. Victorias Milling Co., Inc.*, G.R. No. 167674, 17 June 2008, 554 SCRA 561, 569; *Duvaz Corporation v. Export and Industry Bank*, G.R. No. 163011, 7 June 2007, 523 SCRA 405, 416-417.

For forum-shopping to exist, the following elements must be present: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[20]

On their face, the two Complaints filed by Sps. Marcelo seem to have an overwhelming identity of elements, for in both cases, the right to which they hinge their claim is their purported ownership of Lot No. 3976. This fact, however, cannot be used as ammunition to insist on a supposed violation of the rule on forum-shopping. It is clear that the parties entered into two separate contracts, thus signifying that there are also two separate causes of action.

In examining the two causes of action, we must compare the contracts entered into by the parties. In G.R. No. 184079, Sps. Marcelo alleged that Sps. Silverio were allowed to construct a house on Lot No. 3976 sometime in May 1987, on the condition that the latter would vacate the property the moment the former would need it. Meanwhile, in G.R. No. 184490, Sps. Marcelo also alleged that Sps. Silverio were allowed to stay in **another house** built in 1986 by Florante Marcelo and Marilou Silverio (but abandoned sometime in 1998), with the understanding that the house would be dismantled the moment Sps. Marcelo would need the premises.

Needless to say, the ownership of the entire Lot No. 3976 is immaterial. In each case, the contractual relations of the parties are confined only to certain portions of Lot No. 3976.

This view is further supported by the fact that the Sps. Marcelo have been disposing of Lot No. 3976 in small portions to different people. To uphold a finding of forum shopping would mean

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[20] *Pentacapital Investment Corp. v. Mahinay*, G.R. No. 171736, 5 July 2010, 623 SCRA 284, citing *Marcopper Mining Corporation v. Solidbank Corporation*, 476 Phil. 415 (2004).

that Sps. Marcelo should file only one complaint against all the other occupants, on the premise that they are the owners of all those lots.

There is merit in the contention that this situation may be akin to that of condominium units, in which the owner-developer is given the right to eject each tenant separately. The rights and duties of both parties need not be reduced to a written contract, as long as the terms remain clear - that Sps. Silverio should vacate the two houses once Sps. Marcelo decided to use them. It therefore follows that there is no *res judicata,* for the finding of ownership in favor of Sps. Marcelo relegates their right to possess only the specific area, subject of each case.

To be. sure, the favorable Decision obtained by the Sps. Marcelo in G.R. No. 184079 only made reference to the area on which the house constructed by Sps. Silverio stands. The same is true with G.R. No. 184490, in which the MeTC limited its judgment to where the abandoned house was built.

Lot No. 3976 remains a public land and is without a registered owner.

Nevertheless, I *concur* with the *ponencia* on the finding that the entire Lot No. 3976 remains a public land.

To begin with, the findings of the DENR ought to be given weight, for factual matters relating to lands of the public domain rest within its competency.[21] This principle is in consonance with our long-held rule that findings of fact of an administrative agency are binding and conclusive upon this Court for as long as substantial evidence supports it.[22]

Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private

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[21] *Estrella v. Robles, Jr.*, G.R. No. 171029, 22 November 2007, 538 SCRA 60.

[22] *Perez v. Cruz*, 452 Phil. 597 (2003), citing *Bulilan v. Commission on Audit*, 360 Phil. 626, 634 (1998), *Villaflor v. Court of Appeals*, 345 Phil. 524, 562 (1997).

person by the State, remain part of the inalienable public domain. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration, who must prove that the land subject of the application is alienable or disposable.[23] Failure of the applicant to overcome this threshold retains the property within the public realm.

As clarified on record, Lot No. 3976 is still a public land, and no land patent has been issued over it as a whole or over any portion thereof. The unnumbered MSA filed by Sps. Marcelo on 30 September 1991 has already been cancelled by the DENR in a Decision dated 11 July 2007 for violating Section 2 of Republic Act No. 730,[24] and for not complying with the requirements of Commonwealth Act No. 141.[25] Hence, the lot has no registered owner.

Coming now to the merits of the case, well-settled is the rule that in an ejectment suit, the only issue is possession *de facto* or physical or material possession, and not possession *de jure*. So that even if the question of ownership is raised in the pleadings, as in this case, the court may pass upon such issue but only to determine the question of possession, especially if the former is inseparably linked with the latter.[26] Article 539 of the Civil Code states:

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[23] *Republic v. Medida*, G.R. No. 195097, 13 August 2012, 678 SCRA 317, citing *Republic v. Dela Paz*, G.R. No. 171631, 15 November 2010, 634 SCRA 610, 621-622.

[24] *Rollo*, p. 108; DENR Decision dated 11 July 2007. The relevant portion of R.A. 730, Sec. 2 provides: Except in favor of the Government or any of its branches, units, or institutions lands acquired under the provisions of this Act shall not be subject to encumbrance or alienation before the patent is issued and for a term of ten years from the date of the issuance of such patent, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period. x x x

[25] *Id.* at 106.

[26] *Dizon v. Court of Appeals*, 332 Phil. 429 (1996). See also *Del Rosario v. Court of Appeals*, 311 Phil. 589; *Mediran v. Villanueva*, 37 Phil. 752; *Somodio v. Court of Appeals*, 235 SCRA 307; *De Luna v. Court of Appeals*, 212 SCRA 276; *Oblea v. Court of Appeals*, 313 Phil. 804 (1995); *Joven v. Court of Appeals*, 212 SCRA 700.

Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

Thus, possessors, whether in the concept of owners or holders, must be respected anent their right to possess. In *Hermitaño v. Clarito*,[27] we have held thus:

The plaintiff was entitled to have this possession respected until such time as he might have been defeated in the proper action, even if it be true that the deed by which the land was conveyed to him was void. **Even if he had been absolutely without title, with nothing more than the naked possession *de facto* of the land, under Article 446 of the Civil Code he was entitled to have this possession respected.** (Emphasis ours)

It is not denied that Sps. Silverio are currently in actual possession of the area in Lot No. 3976 where the two houses stand, while Sps. Marcelo occupy only 50 square meters thereof. This has been the situation for more than 30 years.[28] Thus, absent any party claiming to have a better right to lawfully eject them, Sps. Silverio ought to remain on the property. Such a consequence is not new and has been passed upon by the Court in *Pajuyo v. Court of Appeals*,[29] in which it ruled:

We are aware of our pronouncement in cases where we declared that "squatters and intruders who clandestinely enter into titled government property cannot, by such act, acquire any legal right to said property." We made this declaration because the person who had title or who had the right to legal possession over the disputed property was a party in the ejectment suit and that party instituted the case against squatters or usurpers.

x x x x x x x x x

Since the party that has title or a better right over the property is not impleaded in this case, we cannot evict on our own the parties.

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[27] 1 Phil. 609, 613 (1902).

[28] *Rollo*, p. 33; Petition for Review on *Certiorari* (G.R. No. 184079), p. 10.

[29] G.R. No. 146364, 3 June 2004, 430 SCRA 492, 523-524.

Such a ruling would discourage squatters from seeking the aid of the courts in settling the issue of physical possession. Stripping both the plaintiff and the defendant of possession just because they are squatters would have the same dangerous implications as the application of the principle of *pari delicto*. Squatters would then rather settle the issue of physical possession among. themselves than seek relief from the courts if the plaintiff and defendant in the ejectment case would both stand to lose possession of the disputed property. This would subvert the policy underlying actions for recovery of possession.

Since Pajuyo has in his favor priority in time in holding the property, he is entitled to remain on the property until a person who has title or a better right lawfully ejects him. Guevarra is certainly not that person. The ruling in this case, however, does not preclude Pajuyo and Guevarra from introducing evidence and presenting arguments before the proper administrative agency to establish any right to which they may be entitled under the law.

In no way should our ruling in this case be interpreted to condone squatting. The ruling on the issue of physical possession does not affect title to the property nor constitute a binding and conclusive adjudication on the merits on the issue of ownership. The owner can still go to court to recover lawfully the property from the person who holds the property without legal title. Our ruling here does not diminish the power of government agencies, including local governments, to condemn, abate, remove or demolish illegal or unauthorized structures in accordance with existing laws. (Emphases supplied)

The rationale behind this ruling was already explained by the Court: "It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order." [30] In fact, even a wrongful possessor may at times be upheld by the courts, though only temporarily and for the purpose of maintaining public order.[31] The larger and permanent interests

[30] *Mediran v. Villanueva*, 37 Phil. 752, 757 (1918).

[31] *Manuel v. Court of Appeals*, 276 Phil. 657 (1991).

of property require that in such rare and exceptional instance, the courts must give preference to and permit actual but wrongful possession. [32]

Consequently, I agree with the *ponencia* that the disposition in these cases does not preclude any person from asserting title or better right so as to lawfully eject the Sps. Silverio from the property.

WHEREFORE, I vote to **DISMISS** the Complaints for unlawful detainer filed by Spouses Ricardo and Evelyn Marcelo against Spouses Armando Silverio, Sr., and Remedios Silverio for lack of merit.

FIRST DIVISION

[G.R. No. 185518. April 17, 2013]

SPOUSES FELIX CHINGKOE AND ROSITA CHINGKOE, *petitioners, vs.* **SPOUSES FAUSTINO CHINGKOE AND GLORIA CHINGKOE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; THE COURT MAY TAKE JUDICIAL NOTICE OF THE RECORDS OF A PRIOR CASE IN THE RESOLUTION OF A CASE PENDING BEFORE IT; APPLICATION.— [I]n *Republic v. Sandiganbayan*, [The Court ruled]: "As a matter of convenience to all the parties, a court *may* properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge

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[32] *Id.*

of, *and* absent an objection from, the adverse party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives at the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending." In the case at bar, as the CA rightly points out in its Resolution dated 28 November 2008, petitioners never objected to the introduction of the Transcript of Stenographic Notes containing the testimony of Tan Po Chu, which were records of Civil Case No. Q-95-22865. As shown by the records and as petitioners admitted in their Reply, the testimony was already introduced on appeal before the RTC. *In fact, it was petitioners themselves who specifically cited Civil Case No. Q-95-22865, referring to it both by name and number,* purportedly to bolster the claim that they were constrained to sue, in order to compel delivery of the title. Given these facts, the CA committed no reversible error in taking judicial notice of the records of Civil Case No. Q-95-22865.

2. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE COURT MAY RESOLVE THE ISSUE OF OWNERSHIP ONLY FOR THE SOLE PURPOSE OF DETERMINING THE ISSUE OF POSSESSION; DETERMINATION OF OWNERSHIP CANNOT BE CLOTHED WITH FINALITY.— Batas Pambansa Blg. 129 states that when the defendant raises the question of ownership in unlawful detainer cases and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession. This Court has repeatedly ruled that although the issue in unlawful detainer cases is physical possession over a property, trial courts may provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession. "These actions are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession. In these cases, the issue is pure physical or *de facto* possession, and pronouncements made on questions of ownership are provisional in nature. The provisional determination of ownership in the ejectment case cannot be clothed with finality."

APPEARANCES OF COUNSEL

Gonzales & Associates for petitioners.
Rigoroso & Galindez for respondents.

D E C I S I O N

SERENO, *C.J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the 3 July 2008 Decision of the Court of Appeals (CA) annulling the 30 March 2007 Decision of the Regional Trial Court (RTC) of Quezon City.[1] The RTC affirmed[2] the Metropolitan Trial Court's (MTC) dismissal [3] of the Complaint for unlawful detainer filed by herein respondents.

The facts, as culled from the records, are as follows:

Respondents are the registered owners of a real property covered by Transfer Certificate of Title No. 8283[4] of the Registry of Deeds of Quezon City. They claim that sometime in 1990, out of tolerance and permission, they allowed respondent Faustino's brother, Felix, and his wife, Rosita, to inhabit the subject property situated at No. 58 Lopez Jaena Street, Ayala Heights, Quezon City. Due to the intercession of their mother, Tan Po Chu, Faustino agreed to sell the property to Felix on condition that the title shall be delivered only after Felix and Rosita's payment of the full purchase price, and after respondents' settlement of their mortgage obligations with the Rizal Commercial Banking Corporation (RCBC). After further

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[1] Docketed as CA-G.R. SP No. 100008; penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Hakim S. Abdulwahid and Jose C. Mendoza; *rollo*, pp. 41-68.

[2] Docketed as Civil Case No. Q-03-50390; penned by Judge Bernelito R. Fernandez on 30 March 2007; *id.* at 282-287.

[3] Docketed as Civil Case No. 27298; penned by Fernando T. Sagun, Jr. on 2 July 2003; *id.* at 104-111.

[4] *Id.* at 338-340.

prodding from their mother, however, and at Felix's request, Faustino agreed to deliver in advance an incomplete draft of a Deed of Absolute Sale, which had not yet been notarized. While respondents themselves drafted the deed, the parties again agreed that the document would only be completed after full payment.[5]

On 24 July 2001, respondents sent a demand letter[6] to petitioners asking them to vacate the premises. To this date, petitioners have refused to do so, prompting respondents to file a complaint[7] for unlawful detainer with the MTC of Quezon City. In their Answer, petitioners presented a copy of a completed Deed of Absolute Sale dated 10 October 1994, claiming that respondents had sold the property for ₱3,130,000, which petitioners had paid in full and in cash on the same day. Due to respondents' adamant refusal to surrender the title to them as buyers, petitioners were allegedly constrained to file an action for specific performance with Branch 96 of the Quezon City RTC on 31 January 1995.[8]

The MTC gave weight to the Deed of Sale presented by petitioners and dismissed the Complaint, as follows:

> The defendants herein assert that "since October 1994, when they bought their property in CASH, their stay thereat is by virtue of their absolute ownership thereof as provided for in the Absolute Deed of Sale," x x x. The foregoing would right away tell us that this Court is barred from ordering the ejectment of the defendants from the premises in question so much so that what is at stake only in cases of this nature as above stated is as regards possession only.
>
> With the execution of the Deed of Absolute Sale whereby the Vendors never reserved their rights and interests over the property after the sale, and the transfer appears to be absolute, beside the fact that the property is now under the control and custody of the

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[5] *Id.* at 43-45.

[6] *Id.* at 341.

[7] *Id.* at 86-97.

[8] *Id.* at 14-15. A copy of the Complaint therein is attached as "Annex TT" to the Petition; *rollo*, pp. 576-581.

defendants, we could conclude that instant case unlawful detainer (sic) is destined to fail,[9] x x x.

The RTC affirmed the findings of the MTC *in toto*, reasoning thus:

x x x (T)here exists a Deed presented in evidence on the sale of the subject property entered into by the herein parties. The Deed of Sale renders weak the claim of tolerance or permission.

Although the plaintiffs-appellants questioned the validity and authenticity of the Deed of Sale, this will not change the nature of the action as an unlawful detainer, in the light of our premise of the principal issue in unlawful detainer – *possession de facto*.[10]

The CA reversed the findings of the lower courts and ruled that a mere plea of title over disputed land by the defendant cannot be used as sound basis for dismissing an action for recovery of possession. Citing *Refugia v. Court of Appeals*, the appellate court found that petitioners' stay on the property was merely a tolerated possession, which they were no longer entitled to continue. The deed they presented was not one of sale, but a "document preparatory to an actual sale, prepared by the petitioners upon the insistence and prodding of their mother to soothe in temper respondent Felix Chingkoe."[11]

Petitioners now come before this Court, raising the following arguments:

a. The CA committed reversible error when it admitted and gave weight to testimony given in a different proceeding (action for specific performance) pending before the Regional Trial Court in resolving the issue herein (unlawful detainer); and

b. The CA committed reversible error when it ruled on the validity of a notarized Deed of Sale in a summary ejectment action.

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[9] *Id.* at 109.

[10] *Id.* at 287.

[11] *Id.* at 55.

We deny the petition.

Anent the first argument, petitioners fault the CA for citing and giving credence to the testimony of Tan Po Chu, who was presented as a witness in *another* case, the action for specific performance filed by petitioners. The CA stated:

In the case instituted by the respondents against herein petitioner for Specific Performance entitled "*Felix Chingkoe and Rosita Chingkoe v. Faustino Chingkoe and Gloria Chingkoe*," docketed as Civil Case No. Q- 95-22865 pending before Branch 96 of the Regional Trial Court of Quezon City, Tan Po Chu testified on 25 November 1999 to shed light on the matter once and for all, to wit:

x x x x x x x x x

Atty. Nicolas:

Q You mentioned that this is the second copy of the deed of absolute sale, you identified the signature appearing here as the signature of Felix, how do you know that this is the signature of Felix?

A Well, he is my son. I am familiar with his signature and besides that he signed it in my presence.

Q And this is the very document and not as photocopy (sic) of the second document which you brought to Felix?

Atty. Flores:

Again, Your Honor, very leading.

Court:

I will allow.

A I am not very sure now but I think this is the real one, I think this is the one because **I saw him signed (sic) this.**

Atty. Nicolas:

May I request that this be marked as Exhibit "1" and the signature of Felix be signed as Exhibit "1-A "?

Court:

Mark.

Atty. Flores:

Just a moment, no basis, Your Honor, please.

Atty. Nicolas:

Your Honor, the witness said that there was a deed of absolute sale, I was asking if she knows how much Felix paid for the property when she delivered the document.

Court:

She never testified that there was a sale, she only said that there was a deed of sale.

Atty. Nicolas:

I will reform, Your Honor.

Q When you delivered this document to Felix, what did he give you in return, if any?

A **He did not give me anything, he had never paid me any single cent.**

Q When you delivered the deed of sale?

A There was no payment whatsoever.

Q As far as you know, Ms. Witness, was the property paid for by Felix to Faustino?

A I swear to God, no payment, there was no payment at all, I swear.

x x x x x x x x x

As clearly shown in the testimony given in open court which was above-quoted, petitioners merely delivered to their mother a draft of the deed, which they signed to appease her and respondent Felix Chingkoe.[12] (Emphases supplied.)

The CA indeed quoted at length from the testimony of Tan Po Chu, and culled therefrom the factual finding that the purported contract of sale had never been consummated between the parties. The CA cited as basis her testimony from Civil Case No. Q-95-22865: that she witnessed Felix signing the blank

[12] *Id.* at 55-63.

deed, and that upon its signing, there was no payment for the property. This account directly contradicts petitioners' claim that payment was made simultaneously with the perfection of the contract.

Petitioners claim that the CA erroneously considered this testimony in Civil Case No. Q-95-22865. They cite the general rule that courts are not authorized to take judicial notice of the contents of the records of other cases. This rule, however, admits of exceptions. As early as *United States v. Claveria*, this Court has stated: "In the absence of objection and as a matter of convenience, a court may properly treat all or part of the original record of a former case filed in its archives, as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose by name and number or in some other manner by which it is sufficiently designated."[13]

We reiterated this stance in *Adiarte v. Domingo*,[14] in which the trial court decided the action pending before it by taking judicial notice of the records of a prior case for a sum of money. The Supreme Court affirmed the trial court's dismissal of the Complaint, after it considered evidence clearly showing that the subject matter thereof was the same as that in the prior litigation. In a 1993 case, *Occidental Land Transportation Company, Inc. v. Court of Appeals*, the Court ruled:

> The reasons advanced by the respondent court in taking judicial notice of Civil Case No. 3156 are valid and not contrary to law. As a general rule, "courts are not authorized to take judicial notice, in the adjudication of cases pending before them, of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or are actually pending before the same judge." The general rule admits of exceptions as enumerated in *Tabuena v. Court of Appeals*, the Court, citing *U.S. v. Claveria*, which We quote:

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[13] 29 Phil. 527, 532 (1915).

[14] 71 Phil. 394 (1941).

x x x (I)n the absence of objection, and as a matter of convenience to all parties, a court may properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives by the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending.

It is clear, though, that this exception is applicable only when, *'in the absence of objection,' 'with the knowledge of the opposing party,'* or *'at the request or with the consent of the parties'* the case is clearly referred to or *'the original or part of the records of the case are actually withdrawn from the archives'* and *'admitted as part of the record of the case then pending.'*

x x x x x x x x x

And unlike the factual situation in *Tabuena v. CA*, the decision in Civil Case No. 3156 formed part of the records of the instant case (Civil Case No. 2728) with the knowledge of the parties and in the absence of their objection. (Emphases supplied, citations omitted).[15]

This doctrine was restated in *Republic v. Sandiganbayan, viz*: "As a matter of convenience to all the parties, a court *may* properly treat all or any part of the original record of a case filed in its archives as read into the record of a case pending before it, when, with the knowledge of, *and* absent an objection from, the adverse party, reference is made to it for that purpose, by name and number or in some other manner by which it is sufficiently designated; or when the original record of the former case or any part of it, is actually withdrawn from the archives at the court's direction, at the request or with the consent of the parties, and admitted as a part of the record of the case then pending."[16] (Underscoring supplied)

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[15] G.R. No. 96721, 19 March 1993, 220 SCRA 167, 175-176.

[16] *Republic of the Philippines v. Sandiganbayan*, G.R. No. 152375, 13 December 2011, 662 SCRA 152, 153.

In the case at bar, as the CA rightly points out in its Resolution dated 28 November 2008,[17] petitioners never objected to the introduction of the Transcript of Stenographic Notes containing the testimony of Tan Po Chu, which were records of Civil Case No. Q-95-22865. As shown by the records and as petitioners admitted in their Reply, the testimony was already introduced on appeal before the RTC. *In fact, it was petitioners themselves who specifically cited Civil Case No. Q-95-22865, referring to it both by name and number,* purportedly to bolster the claim that they were constrained to sue, in order to compel delivery of the title.[18]

Given these facts, the CA committed no reversible error in taking judicial notice of the records of Civil Case No. Q-95-22865. In any case, the said testimony was not the only basis for reversing the RTC's Decision. Independent of the testimony, the CA – through its perusal and assessment of *other* pieces of evidence, specifically the Deed of Absolute Sale – concluded that petitioners' stay on the premises had become unlawful.

Concerning the second issue, petitioners object to the assessment of the Deed of Sale by the CA, claiming such a determination is improper in summary proceedings. It should be noted that it was petitioners who introduced the Deed of Sale in evidence before the MTC and the RTC, as evidence of their claimed right to possession over the property. They attached the deed to their Answer as Annex "1".[19] The CA discovered that they falsified their copy of the document denominated as Deed of Absolute Sale in this wise:

> Said draft of the deed was undated and bears the signature of one witness, as can be clearly noticed upon its very careful perusal. Notably, respondents made it appear in the draft of the Deed of Absolute Sale that there indeed was a valid and consummated sale when in truth and in fact, there was none. The document accomplished

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[17] *Rollo,* pp. 70-84.

[18] *Id.* at 284, p. 3 of the RTC Decision, quoting pertinent portions of the Answer.

[19] *Id.* at 283.

by the respondents (herein petitioners) gave them some semblance, albeit highly questionable, of ownership over the property by affixing their signatures, affixing the signature of one Cora Hizon as witness and superimposing the signature of Jane Chan with that of one Noralyn Collado.[20]

Batas Pambansa Blg. 129 states that when the defendant raises the question of ownership in unlawful detainer cases and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.[21] This Court has repeatedly ruled that although the issue in unlawful detainer cases is physical possession over a property, trial courts may provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession.[22] "These actions are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession. In these cases, the issue is pure physical or *de facto* possession, and pronouncements made on questions of ownership are provisional in nature. The provisional determination of ownership in the ejectment case cannot be clothed with finality." [23]

Trial courts must necessarily delve into and weigh the evidence of the parties in order to rule on the right of possession, as we have discussed in *Sps. Esmaquel and Sordevilla v. Coprada*:

> In unlawful detainer cases, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. However, defendant's possession became illegal when the plaintiff demanded that defendant vacate the subject property due to the expiration or termination of the right to possess under their contract, and defendant refused to heed such demand.

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[20] *Id.* at 63-64.

[21] Sec. 33, par. 2.

[22] *Barrientos v. Rapal*, G.R. No. 169594, 20 July 2011, 654 SCRA 165.

[23] *Samonte v. Century Savings Bank*, G.R. No. 176413, 25 November 2009, 605 SCRA 478, 486.

The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property. Since the issue of ownership was raised in the unlawful detainer case, its resolution boils down to which of the parties' respective evidence deserves more weight. [24] (Emphasis supplied, citations omitted.)

WHEREFORE, in view of the foregoing, we deny the instant Petition for lack of merit. The Decision of the Court of Appeals in CA-G.R. SP No. 100008 (dated 3 July 2008) is **AFFIRMED**.

We make no pronouncement as to attorney's fees for lack of evidence.

SO ORDERED.

Leonardo-de Castro, Villarama, Jr., Perez[*] and *Reyes, JJ.,* concur.

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[24] G.R. No. 152423, 15 December 2010, 638 SCRA 428, 436.

[*] Designated as additional member per raffle dated 13 September 2010 in lieu of Associate Justice Lucas P. Bersamin.

THIRD DIVISION

[G.R. Nos. 186739-960. April 17, 2013]

LEOVEGILDO R. RUZOL, *petitioner, vs.* **THE HON. SANDIGANBAYAN and the PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNIT (LGU) IS ALSO EMPOWERED TO MONITOR AND REGULATE SALVAGED FOREST PRODUCTS; THIS IS A SHARED RESPONSIBILITY WHICH MAY BE DONE EITHER BY DENR OR THE LGU OR BOTH.— [T]he LGU also has, under the LGC of 1991, ample authority to promulgate rules, regulations and ordinances to monitor and regulate salvaged forest products, *provided* that the parameters set forth by law for their enactment have been faithfully complied with. While the DENR is, indeed, the primary government instrumentality charged with the mandate of promulgating rules and regulations for the protection of the environment and conservation of natural resources, it is not the only government instrumentality clothed with such authority. While the law has designated DENR as the primary agency tasked to protect the environment, it was not the intention of the law to arrogate unto the DENR the exclusive prerogative of exercising this function. Whether in ordinary or in legal parlance, the word "primary" can never be taken to be synonymous with "sole" or "exclusive." In fact, neither the pertinent provisions of PD 705 nor EO 192 suggest that the DENR, or any of its bureaus, shall exercise such authority to the exclusion of all other government instrumentalities, *i.e.*, LGUs. On the contrary, the claim of DENR's supposedly exclusive mandate is easily negated by the principle of local autonomy enshrined in the 1987 Constitution in relation to the general welfare clause under Sec. 16 of the LGC of 1991[.] x x x Pursuant to [this] provision, municipal governments are clothed with authority to enact such ordinances and issue such regulations as may be necessary to carry out and discharge the responsibilities conferred upon

them by law, and such as shall be necessary and proper to provide for the health, safety, comfort and convenience, maintain peace and order, improve public morals, promote the prosperity and general welfare of the municipality and its inhabitants, and ensure the protection of property in the municipality. x x x [T]here is a clear merit to the view that the monitoring and regulation of salvaged forest products through the issuance of appropriate permits is a **shared responsibility** which may be done either by DENR or by the LGUs or by both. DAO 1992-30, in fact, says as much, thus: the "**LGUs shall share with the national government, particularly the DENR, the responsibility in the sustainable management and development of the environment and natural resources within their territorial jurisdiction**."

2. ID.; ID.; ID.; ID.; PERMIT TO TRANSPORT SALVAGED FOREST PRODUCTS ISSUED BY THE LGU IS NOT A MANIFESTATION OF USURPATION OF DENR'S AUTHORITY.— [T]he requirement of permits to transport salvaged forest products is not a manifestation of usurpation of DENR's authority but rather an *additional measure* which was *meant to complement* DENR's duty to regulate and monitor forest resources within the LGU's territorial jurisdiction. This is consistent with the "canon of legal hermeneutics that instead of pitting one statute against another in an inevitably destructive confrontation, courts must exert every effort to reconcile them, remembering that both laws deserve respect as the handiwork of coordinate branches of the government." Hence, if there appears to be an apparent conflict between promulgated statutes, rules or regulations issued by different government instrumentalities, the proper action is not to immediately uphold one and annul the other, but rather give effect to both by harmonizing them if possible. Accordingly, although the DENR requires a Wood Recovery Permit, an LGU is not necessarily precluded from promulgating, pursuant to its power under the general welfare clause, complementary orders, rules or ordinances to monitor and regulate the transportation of salvaged forest products.

3. ID.; ID.; ID.; ID.; THERE MUST BE AN ENABLING ORDINANCE TO CONFER THE PERMITS ISSUED BY LGU WITH VALIDITY.— We find that an enabling ordinance is necessary to confer the subject permits with validity. As correctly held

by the Sandiganbayan, the power to levy fees or charges under the LGC is exercised by the Sangguniang Bayan through the enactment of an appropriate ordinance wherein the terms, conditions and rates of the fees are prescribed. Needless to say, one of the fundamental principles of local fiscal administration is that "local revenue is generated only from sources expressly authorized by law or ordinance." It is likewise expressly stated in Sec. 444(b)(3)(iv) of the LGC that the authority of the municipal mayor to issue licenses and permits should be "pursuant to a law or ordinance." It is the Sangguniang Bayan, as the legislative body of the municipality, which is mandated by law to enact ordinances against acts which endanger the environment, *i.e.*, illegal logging, and smuggling of logs and other natural resources. In this case, an examination of the pertinent provisions of General Nakar's *Revised Municipal Revenue Code* and *Municipal Environment Code* reveals that there is no provision unto which the issuance of the permits to transport may be grounded. Thus, in the absence of an ordinance for the regulation and transportation of salvaged products, the permits to transport issued by Ruzol are infirm.

4. ID.; ID.; ID.; ID.; AN ADMINISTRATIVE ORDER ISSUED BY THE DENR DECLARING A CERTAIN AREA AS A COMMUNAL FOREST IS ALSO REQUIRED.— Although We recognize the LGU's authority in the management and control of communal forests within its territorial jurisdiction, We reiterate that this authority should be exercised and enforced in accordance with the procedural parameters established by law for its effective and efficient execution. As can be gleaned from the same Sec. 17 of the LGC, the LGU's authority to manage and control communal forests should be "pursuant to national policies and is subject to supervision, control and review of DENR." As correctly held by the Sandiganbayan, the term "communal forest" has a well-defined and technical meaning. x x x [Pursuant to JMC 1998-01 promulgated by the DILG and the DENR] x x x before an area may be considered a communal forest, the following requirements must be accomplished: (1) an **identification** of potential communal forest areas within the geographic jurisdiction of the concerned city/municipality; (2) a **forest land use plan** which shall indicate, among other things, the site and location of the communal forests; (3) a **request** to the DENR Secretary through a **resolution passed by the**

Sangguniang Bayan concerned; and (4) an **administrative order** issued by DENR Secretary **declaring the identified area as a communal forest**. In the present case, the records are bereft of any showing that these requirements were complied with. Thus, in the absence of an established communal forest within the Municipality of General Nakar, there was no way that the subject permits to transport were issued as an incident to the management and control of a communal forest.

5. ID.; ID.; ID.; ID.; WOOD RECOVERY PERMIT FROM THE DENR IS A PREREQUISITE BEFORE OBTAINING A PERMIT TO TRANSPORT FROM THE LGU.— This is not to say, however, that compliance with abovementioned statutory requirements for the issuance of permits to transport foregoes the necessity of obtaining the Wood Recovery Permit from the DENR. As earlier discussed, the permits to transport may be issued to complement, and not substitute, the Wood Recovery Permit, and may be used only as an additional measure in the regulation of salvaged forest products. **To elucidate, a person seeking to transport salvaged forest products still has to acquire a Wood Recovery Permit from the DENR as a prerequisite before obtaining the corresponding permit to transport issued by the LGU**.

6. CRIMINAL LAW; USURPATION OF OFFICIAL FUNCTIONS; A MUNICIPAL MAYOR WHO ISSUED INVALID PERMITS TO TRANSPORT SALVAGED FOREST PRODUCT MAY NOT BE HELD GUILTY THEREOF IF SUCH ISSUANCE WAS MADE IN GOOD FAITH.— We note that this case of usurpation against Ruzol rests principally on the prosecution's theory that the DENR is the only government instrumentality that can issue the permits to transport salvaged forest products. The prosecution asserted that Ruzol usurped the official functions that properly belong to the DENR. But erstwhile discussed at length, the DENR is not the sole government agency vested with the authority to issue permits relevant to the transportation of salvaged forest products, considering that, pursuant to the general welfare clause, LGUs may also exercise such authority. Also, as can be gleaned from the records, the **permits to transport were meant to complement and not to replace** the Wood Recovery Permit issued by the DENR. In effect, Ruzol required the issuance of the subject permits under his authority as municipal mayor and independently of the official functions

granted to the DENR. The records are likewise bereft of any showing that Ruzol made representations or false pretenses that said permits could be used in lieu of, or at the least as an excuse not to obtain, the Wood Recovery Permit from the DENR. x x x Contrary to the conclusions made by the Sandiganbayan, We find that the conduct of the public consultation was not a badge of bad faith, but a sign supporting Ruzol's good intentions to regulate and monitor the movement of salvaged forest products to prevent abuse and occurrence of untoward illegal logging. In fact, the records will bear that the requirement of permits to transport was not Ruzol's decision alone; it was, as earlier narrated, a result of the collective decision of the participants during the Multi-Sectoral Consultative Assembly. As attested to by Bishop Julio Xavier Labayen, it was the participants who agreed that the subject permits be issued by the Office of the Mayor of General Nakar, through Ruzol, in the exercise of the latter's authority as local chief executive. x x x If, indeed, Ruzol willfully and deliberately intended to usurp the official functions of the DENR as averred by the prosecution, he would not have asked the presence of a DENR official who has the authority and credibility to publicly object against Ruzol's allegedly intended usurpation. Thus, the presence of PENRO Delgado during the Multi-Sectoral Assembly does not negate, but strengthens Ruzol's claim of good faith. x x x Ruzol chose to exercise this right and to share in this responsibility by exercising his authority as municipal mayor––an act which was executed with the concurrence and cooperation of non-governmental organizations, industry stakeholders, and the concerned citizens of General Nakar. Admittedly, We consider his acts as invalid but it does necessarily mean that such mistakes automatically demand Us to rule a conviction. This is in consonance with the settled principle that **"all reasonable doubt intended to demonstrate error and not crime should be indulged in for the benefit of the accused."**

7. ID.; ID.; THE PROSECUTION FAILED TO PROVE BEYOND REASONABLE DOUBT THE COMMISSION OF THE CRIME.— In the present case, the **prosecution has failed to prove beyond reasonable doubt that Ruzol possessed that "criminal mind" when he issued the subject permits.** What is clear from the records is that Ruzol, as municipal mayor, intended to regulate and monitor salvaged forest products

within General Nakar in order to avert the occurrence of illegal logging in the area. We find that to hold him criminally liable for these seemingly noble intentions would be a step backward and would run contrary to the standing advocacy of encouraging people to take a pro-active stance in the protection of the environment and conservation of our natural resources.

APPEARANCES OF COUNSEL

Altamira Cas Alaba & Collado Law Offices and *Bernardino P. Salvador, Jr.* for petitioner.
The Solicitor General for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal seeking to nullify the December 19, 2008 Decision[1] of the First Division of the Sandiganbayan in Criminal Case Nos. SB-08-CRIM-0039 to 0259, which convicted Leovegildo R. Ruzol (Ruzol), then Mayor of General Nakar, Quezon, of Usurpation of Official Functions penalized under Article 177 of the Revised Penal Code (RPC).

The Facts

Ruzol was the mayor of General Nakar, Quezon from 2001 to 2004. Earlier in his term, he organized a Multi-Sectoral Consultative Assembly composed of civil society groups, public officials and concerned stakeholders with the end in view of regulating and monitoring the transportation of salvaged forest products within the vicinity of General Nakar. Among those present in the organizational meeting were Provincial Environment and Natural Resources Officer (PENRO) Rogelio Delgado Sr. and Bishop Julio Xavier Labayen, the OCD-DD of the Prelature of Infanta Emeritus of the Catholic Church and Chairperson

[1] Penned by Associate Justice Alexander G. Gesmundo and concurred in by Presiding Justice Diosdado M. Peralta (now a member of this Court) and Associate Justice Rodolfo A. Ponferrada.

of TIPAN, an environmental non-government organization that operates in the municipalities of General Nakar, Infanta and Real in Quezon province. During the said assembly, the participants agreed that to regulate the salvaged forests products, the Office of the Mayor, through Ruzol, shall issue a **permit to transport** after payment of the corresponding fees to the municipal treasurer.[2]

Consequently, from 2001 to 2004, two hundred twenty-one (221) permits to transport salvaged forest products were issued to various recipients, of which forty-three (43) bore the signature of Ruzol while the remaining one hundred seventy-eight (178) were signed by his co-accused Guillermo T. Sabiduria (Sabiduria), then municipal administrator of General Nakar.[3]

On June 2006, on the basis of the issued Permits to Transport, 221 Informations for violation of Art. 177 of the RPC or for Usurpation of Authority or Official Functions were filed against Ruzol and Sabiduria, docketed as Criminal Case Nos. SB-08-CRIM-0039 to 0259.

Except for the date of commission, the description of forest product, person given the permit, and official receipt number, the said Informations uniformly read:

> That, on **(*date of commission*)** or sometime prior or subsequent thereto, in General Nakar, Quezon, and within the jurisdiction of this Honorable Court, the above-named accused Leovegildo R. Ruzol and Guillermo M. Sabiduria, both public officers, being then the Municipal Mayor and Municipal Administrator, respectively, of General Nakar, Quezon, taking advantage of their official position and committing the offense in relation to their office, conspiring and confederating with each other did then and there willfully, unlawfully and criminally, issue permit to transport **(*description of forest product*)** to **(*person given the permit*)** under O.R. No. **(*official receipt number*)** under the pretense of official position and without being lawfully entitled to do so, such authority properly belonging to the Department of Environment and Natural Resources, to the damage and prejudice of the of the government.

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[2] *Rollo*, pp. 341-342, 155.

[3] *Id.* at 192.

CONTRARY TO LAW.[4]

The details for each Information are as follows:[5]

Criminal Case No.	Date of Commission	Description of Forest Product	Person Given the Permit	Official Receipt No.
0039	20 Jan. 2004	1,000 board ft malaruhat/ marang	David Villareal Jr.	1623446
0040	16 Jan. 2004	600 board ft lawaan	Pepito Aumentado	1623463
0041	15 Jan. 2004	100 pcs. malaruhat (assorted sizes)	Francisco Mendoza	1708352
0042	15 Jan. 2004	300 cubic m or 3,000 board ft good lumber	Edmundo dela Vega	1708353
0043	15 Jan. 2004	600 board ft good lumber	David Villareal, Jr.	1708321
0044	15 Jan. 2004	1,050 board ft good lumber	Romeo Sabiduria	1708322
0045	12 Jan. 2004	1,000 board ft malaruhat	Nestor Astejada	1625521
0046	09 Jan. 2004	4,000 board ft good lumber (assorted sizes)	Naty Orozco	1623421
0047	08 Jan. 2004	700 board ft lauan	Winnie Aceboque	1623415
0048	05 Jan. 2004	500 board ft lauan	Edmundo dela Vega	1623041
0049	07 Jan. 2004	4 x 5 haligi	Mercy Vargas	1623314

[4] *Id.* at 147-148.

[5] *Id.* at 148-154.

0050	06 Jan. 2004	good lumber	Mario Pujeda	1623310
0051	21 Oct. 2002	1,000 board ft sliced lumber	Conchita Odi	0830825
0052	21 Oct. 2002	400 board ft sliced lumber	Lita Crisostomo	0830826
0053	28 Oct. 2002	450 board ft marang lumber	Agosto Astoveza	0830829
0054	08 Jan. 2003	300 board ft sliced lumber (assorted sizes)	Edna E. Moises	0943941
0055	13 Jan. 2003	1,500 board ft sliced lumber (assorted sizes)	Dante Z. Medina	0943964
0056	16 Jan. 2003	400 board ft sliced lumber (assorted sizes)	Johnny A. Astoveza	0943975
0057	27 Jan. 2003	7 pcs sliced lumber & 1 piece 18 roda	Sonny Leynes	1181827
0058	14 Feb. 2003	2,000 pcs trophy (wood carvings)	Flordeliza Espiritu	1182033
0059	17 Feb. 2003	700 board ft sliced lumber (assorted sizes)	Nestor Astejada	1181917
0060	18 Feb. 2003	1,632 board ft hard wood, kisame & sanipa	Arthur/ Lanie Occeña	1182207
0061	20 Feb. 2004	126 pcs lumber	Lamberto Aumentado	1708810
0062	3 March 2003	450 board ft hard wood (assorted sizes)	Nestor Astoveza	1182413
0063	6 March 2003	160 pcs sliced lumber (assorted sizes)	Remedios Orozco	1182366

0064	10 March 2003	1,500 board ft malaruhat (assorted sizes)	Nestor Astejada	1181996
0065	11 March 2003	900 board ft sliced lumber (assorted sizes)	Fernando Calzado	1182233
0066	13 March 2003	1,408 board ft hard wood (assorted sizes)	Nestor Astejada	1182553
0067	20 March 2003	90 pcs. sliced lumber (assorted sizes)	Remy Orozco	1182157
0068	21 March 2003	90 pcs. sliced lumber (assorted sizes)	Rene Francia	1182168
0069	25 March 2003	500 board ft lumber (assorted sizes)	Thelma Ramia	1182179
0070	26 March 2003	1 pc. 60 x 75 bed (narra) finished product	Roy Justoz	1182246
0071	14 April 2004	95 pcs. kalap (9 ft.); 6 pcs. post (10 ft.) & 500 pcs. anahaw	Anita Solloza	3651059
0072	08 April 2004	460 board ft lumber (assorted sizes)	Remy Orozco	3651101
0073	14 April 2004	69 pcs. sliced lumber (assorted sizes)	Dindo America	3651101
0074	23 April 2003	870 board ft hard lumber (assorted sizes)	Amado Pradillada	3651268
0075	24 April 2003	400 board ft lumber (assorted sizes)	Romy Buendicho	3651237
0076	24 April 2003	400 board ft rattan	Emmanuel Buendicho	3651324
0077	30 April 2004	1,000 board ft good lumber (assorted sizes)	Mylene Moises	3651335-C

0078	30 April 2004	500 board ft sliced lumber (assorted sizes)	Carlito Vargas	3651336
0079	08 May 2003	72 x 78 bed (narra); 3 pcs. 60 x 75 bed (ling manok) & 1 pc. 48 x 75 ed (kuling manok) finished product	Fely Justo	3651519
0080	12 May 2003	294 board ft lumber	Virgilio Cuerdo	3650927
0081	13 May 2003	43 pcs. sliced lumber (assorted sizes)	Amando Lareza	3651783
0082	14 May 2003	750 board ft good lumber	Wilma Cuerdo	3651529
0083	15 May 2003	440 board ft lumber	Marte Cuballes	3651532
0084	15 May 2003	214 pcs. 2x6x7 or 1,500 board ft finished product	Anneliza Vargas	3651531
0085	26 May 2003	57 pcs. sliced lumber (assorted sizes)	Danny Sanchez	3651585
0086	27 May 2003	400 board ft cut woods	Emy Francia	3651394
0087	30 May 2003	300 board ft lumber	Daisy Cuerdo	3650943
0088	30 May 2003	1,000 board ft lumber (assorted sizes)	Lea Astoveza	3651161
0089	05 June 2003	130 pcs. or 1,500 board ft lumber cut woods	Jose Noly Moises	3651809
0090	06 June 2003	300 board ft lumber	Mercy Escaraga	3651169

0091	18 June 2003	800 board ft good lumber	Dante Medena	3651749
0092	24 June 2003	28 pcs. good lumber (assorted sizes)	Virgilio Cuerdo	1247102
0093	25 June 2003	190 pcs. good lumber (assorted sizes)	Dante Medina	1247205
0094	02 July 2003	800 board ft. good lumber	Dante Medina	1247221
0095	02 July 2003	105 pcs. fresh cut lumber (assorted sizes)	Emmanuel Lusang	1247167
0096	04 July 2003	Assorted sizes of good lumber	Alberto dela Cruz	1247172
0097	07 July 2003	Bulukan woods	Conchita Ligaya	1247175
0098	07 July 2003	6 pcs. haligi	Jane Bulagay	1247173
0099	11 July 2003	700 board ft. cut woods	Dominador Aveno	1247452
0100	14 July 2003	800 board ft. cut wood/ lumber	Dante Medina	1247180
0101	16 July 2003	600 board ft. cut lumber	Rachelle Solana	1247182
0102	23 July 2003	1,200 board ft. hard lumber	Necito Crisostomo	1247188
0103	23 July 2003	700 board ft. good lumber	Nestor Astejada	1247129
0104	28 July 2003	959 board ft. cut lumber	Necito Crisostomo	1247428

0105	29 July 2003	600 board ft. lumber	Marilou Astejada	1247191
0106	01 Aug. 2003	1,000 board Malaruhat	Ruel Ruzol	1247198
0107	05 Aug. 2003	800 board ft. lumber	Virgilio Aumentado	1322853
0108	08 Aug. 2003	4.8 cubic ft. Amlang woods	Rosa Turgo	1322862
0109	12 Aug. 2003	788 Board ft. cut woods	Maria Teresa Adornado	1322865
0110	25 Aug. 2003	500 board ft. assorted lumber	Romy Buendicho	1322929
0111	28 Aug. 2003	2 sala sets	Roy Justo	1322879
0112	29 Aug. 2003	456 pieces good lumber (assorted sizes)	Marilou Astejada	1323056
0113	03 Sept. 2003	5 cubic ft softwoods (assorted sizes)	Rosa Turgo	1322834
0114	05 Sept. 2003	1,000 board ft. good lumber (assorted sizes)	Agustin Vargas	1323064
0115	08 Sept. 2003	80 pcs. wood post	Peter Banton	1323124
0116	09 Sept. 2003	1 forward load (soft wood)	Efifania V. Astrega	1323023
0117	11 Sept. 2003	1 forward load (assorted species)	Noling Multi Purpose Corp.	1323072
0118	11 Sept. 2003	500 board ft. good lumber	Agustin Vargas	1323071
0119	12 Sept. 2003	900 board ft. good lumber (assorted sizes)	Nestor Astejada	1323073

0120	15 Sept. 2003	950 board ft. Malaruhat	Edna Moises	1323128
0121	16 Sept. 2003	14 pcs. Panel door	Roy Justo	1323041
0122	17 Sept. 2003	546 board ft. soft woods	Mr. Marquez	1322951
0123	19 Sept. 2003	1,600 board ft. good lumber (assorted sizes)	Decembrano Sabiduria	1323085
0124	22 Sept. 2003	900 board ft. good lumber	Jeffrey dela Vega	1323095
0125	22 Sept. 2003	1 Jeep load hard wood	Federico Marquez	1323100
0126	25 Sept. 2003	750 board ft. Malaruhat/ Marang	Virgilio Villareal	1323252
0127	03 Oct. 2003	750 board ft. Malaruhat/ Marang	Virgilio Villareal	1323252
0128	02 Oct. 2003	60 pcs. good lumber (assorted sizes)	Nestor Astorza	1482662
0129	03 Oct. 2003	1,600 board ft. good lumber (assorted sizes)	Virgilio Villareal	1482666
0130	03 Oct. 2003	400 board ft. Malaruhat (assorted sizes)	Amado Pradillada	1482815
0131	03 Oct. 2003	1 full load (soft wood)	Flordeliza Espiritu	1482867
0132	03 Oct. 2003	6,342 board ft sticks	Joel Pacaiqui	1482716
0133	03 Oct. 2003	6,090 board ft sticks	Joel Pacaiqui	1482717

0134	07 Oct. 2003	900 board ft. good lumber (assorted sizes)	Mylene Moises	1482670
0135	13 Oct. 2003	600 board ft. Lawaan (assorted sizes)	Winnie Acebaque	1482734
0136	13 Oct. 2003	1,700 board ft. Malaruhat (assorted sizes)	Nestor Bautista	1482740
0137	13 Oct. 2003	300 board ft. Lawaan (assorted sizes)	Trinidad Guerero	1482774
0138	16 Oct. 2003	700 board ft. Lawaan	Federico Marquez	1482782
0139	17 Oct. 2003	4,602 board ft. good lumber (assorted sizes)	Nenita Juntreal	1482787
0140	20 Oct. 2003	1,700 board ft. Malaruhat (assorted sizes)	Belen Ordinado	1482793
0141	23 Oct. 2003	66 pcs. good lumber (assorted sizes)	Nestor Astejada	1482847
0142	25 Oct. 2003	1,700 board ft. good lumber	Dante Medina	1323277
0143	27 Oct. 2003	1,800 board ft. good lumber (assorted sizes)	Dante Medina	1482951
0144	28 Oct. 2003	1,254 board ft. good lumber (assorted sizes)	Jonathan Supremo	1323281
0145	28 Oct. 2003	2,500 board ft. lumber (assorted sizes)	Ramir Sanchez	1483001

0146	28 Oct. 2003	500 board ft. good lumber (assorted sizes)	Rolando Franela	1323280
0147	03 Nov. 2003	850 finished products (cabinet component, balusters, door jambs)	Naty Orozco	1483020
0148	03 Nov. 2003	400 board ft. good lumber (assorted sizes) & 6 bundles of sticks	Elizabeth Junio	1483022
0149	10 Nov. 2003	1,770 board ft. good lumber (assorted sizes)	Dante Medina	1483032
0150	10 Nov. 2003	1,000 board ft. lumber	Nestor Astejada	1483033
0151	12 Nov. 2003	900 board ft. lumber (assorted sizes)	Federico Marquez	1483041
0152	12 Nov. 2003	Mini dump truck good lumber (assorted sizes)	Rizalito Francia	1483042
0153	14 Nov. 2003	500 components, 100 pcs balusters (assorted sizes of stringers, tassels)	Annie Gonzales	1483070
0154	14 Nov. 2003	700 board ft. good lumber	Winnie Aceboque	1323287
0155	17 Nov. 2003	1,600 board ft. Malaruhat lumber (assorted sizes)	Federico Marquez	1483072
0156	05 Nov. 2003	400 board ft. Tapil & 7 pcs. 1x10x14	Belen Ordinado	1483023
0157	05 Nov. 2003	1,000 board ft. lumber (assorted sizes)	Leonardo Aveno	1623003

0158	05 Nov. 2003	150 board ft. good lumber	Francisco Mendoza	1483027
0159	07 Nov. 2003	433 bundles of semi-finished products	Naty Orozco	1483031
0160	08 Nov. 2003	800 board ft. lumber (assorted sizes)	Armando Pradillada	1483134
0161	25 Nov. 2003	30 pcs. sliced lumber	Ariel Molina	1632059
0162	19 Nov. 2003	1,000 board ft. good lumber (assorted sizes)	Dante Medina	1623053
0163	20 Nov. 2003	500 board ft. good lumber (assorted sizes)	Maria Teresa Adornado	1323288
0164	20 Nov. 2003	1,500 board ft. good lumber (assorted sizes)	Romeo Sabiduria	1483080
0165	21 Nov. 2003	1,000 board ft. Malaruhat lumber (assorted sizes)	Dante Medina	1623057
0166	25 Oct. 2003	2,000 board ft. lumber (assorted sizes)	Federico Marquez	1322982
0167	25 Nov. 2003	500 board ft. Malaruhat	Federico Marquez	1483090
0168	25 Nov. 2003	70 bundles of Rattan (assorted sizes)	Manuel Buendicho	1483095
0169	28 Nov. 2003	6,542 board ft. finished products (cabinet and components)	Nenita Juntareal	1623019

0170	01 Dec. 2003	400 board ft. Malaruhat	Federico Marquez	1623061
0171	01 Dec. 2003	500 board ft. good lumber	Nestor Astejada	1483123
0172	01 Dec. 2003	1,500 board ft. lumber (assorted sizes)	Belen Ordinado	1623063
0173	03 Dec. 2003	500 board ft. Laniti	Rosa Turgo	1483125
0174	04 Dec. 2003	1,000 board ft. lumber	Dante Medina	1483127
0175	04 Dec. 2003	26 pcs. lumber (assorted sizes) & 2 bundles of sticks	Nenita Juntareal	1483128
0176	05 Dec. 2003	800 board ft. lumber	Nestor Astejada	1483131
0177	08 Dec. 2003	678 board ft. good lumber (assorted sizes)	Elenor Rutaquio	1623082
0178	08 Dec. 2003	200 board ft. lumber (assorted sizes)	William Rutaquio	1623010
0179	09 Dec. 2003	1,800 board ft. lumber	Nestor Astejada	1623090
0180	12 Dec. 2003	One jeep load of good lumber (assorted sizes)	Angelo Avellano	1623099
0181	12 Dec. 2003	500 board ft. Lawaan	Merly Pante	1623100
0182	12 Dec. 2003	800 board ft. lumber	Pepito Aumentado	1483147
0183	16 Dec. 2003	600 board ft. Malaruhat	Jonathan Marcial	1623033

0184	16 Dec. 2003	650 board ft. lumber	Pepito Aumentado	1482987
0185	16 Dec. 2003	1,000 board ft. Malaruhat	Dante Medina	1482986
0186	18 Dec. 2003	100 board ft. lumber	Aladin Aveno	1322992
0187	19 Dec. 2003	780 board ft. lumber	Pepito Aumentado	1323000
0188	19 Dec. 2003	1,500 board ft. coco lumber	Felecita Marquez	1322998
0189	22 Dec. 2003	600 board ft. lumber	Belen C. Ordinado	1623209
0190	29 Dec. 2003	600 board ft. Lawaan	Winnie Aciboque	1623211
0191	29 Dec. 2003	300 board ft. lumber	Yolanda Crisostomo	1623210
0192	30 Dec. 2003	800 board ft. Lawaan	Pepito Aumentado	1623215
0193	20 Nov. 2003	150 board ft. good lumber (assorted sizes)	Francisco Mendoza	1483086
0194	30 June 2003	450 board ft. fresh cut lumber	Mylene Moises	1247126
0195	13 July 2001	1 L-300 load of finished and semi-finished products	Evangeline Moises	9894843-Q
0196	02 July 2001	96 pcs. good lumber (assorted sizes)	Rollie L. Velasco	9894996-Q
0197	07 May 2004	1,500 board ft. babayahin lumber	Nemia Molina	200647
0198	19 April 2004	107 pcs. sliced lumber (assorted sizes)	Carlo Gudmalin	1868050

0199	5 March 2004	10 pcs. Deadwood (Bulakan)	Elizabeth Junio	1708899
0200	2 March 2004	600 board ft. Amalang wood	Roda Turgo	1867608
0201	1 March 2004	149 sliced lumber (assorted sizes)	Necito Crisostomo	1708891
0202	1 March 2004	80 bundles of rattan	Manuel Buendicho	1708890
0203	23 Feb. 2004	30 pcs. sliced lumber (assorted sizes)	Leonardo Aveno	1708863
0204	13 Feb. 2004	50 pcs. sliced sliced lumber (assorted sizes)	Federico Marquez	1708698
0205	12 Feb. 2004	69 pcs. sliced sliced lumber (assorted sizes)	Florencio Borreo	1708694
0206	17 Feb. 2004	50 pcs. sliced sliced lumber (assorted sizes)	Ronnie Astejada	1708774
0207	04 Feb. 2004	600 board ft. sliced lumber (assorted sizes)	Pepito Aumentado	1708486
0208	1 March 2004	21 pcs. Lawaan (assorted sizes)	Atan Marquez	1708878
0209	4 Feb. 2004	563 board ft. sliced lumber (assorted sizes)	Decembrano Sabiduria	1708487
0210	06 Feb. 2004	80 pcs. Buukan (Ugat)	Maila S. Orozco	1708547
0211	30 Jan. 2004	1,000 board ft. good lumber (assorted sizes)	Pepito Aumentado	1708534

0212	29 Jan. 2004	950 board ft. good lumber (assorted sizes)	Leonardo Moises	1708528
0213	28 Jan. 2004	1,000 board ft. good lumber (assorted sizes)	Pepito Aumentado	1708518
0214	28 Jan. 2004	5, 000 board ft. good lumber (assorted sizes)	Carmelita Lorenzo	1708521
0215	28 Jan. 2004	350 board ft. good lumber (assorted sizes)	Amando Pradillada	1708368
0216	23 Jan. 2004	800 board ft. lumber (assorted sizes)	Pepito Aumentado	1708517
0217	21 Jan. 2004	1,050 board ft. good lumber (assorted sizes)	Romeo Sabiduria	1708508
0218	06 April 2004	800 board ft. sliced lumber (assorted sizes)	Mylene Moises	1868025
0219	11 March 2004	300 pieces or 1, 200 board ft. sliced lumber (assorted sizes)	Ernesto Aumentado	1708975
0220	02 Feb. 2004	7,000 board ft. good lumber	Carmelita Lorenzo	1708376
0221	08 Jan. 2004	600 board ft. Malaruhat	Nestor Astejada	1623451
0222	10 Dec. 2003	300 pieces good lumber	Francisco Mendoza	1623096
0223	18 Nov. 2003	6,432 board ft. assorted species	Naty Orozco	1483048

0224	30 Oct. 2003	8,000 board ft. Malauban	Ma. Teresa Adornado	1483019
0225	21 Oct. 2003	1,770 board ft. good lumber (assorted sizes)	Dante Medina	1482796
0226	21 Oct. 2003	300 board ft. Malaruhat (assorted sizes)	Leonardo S. Aveno	1323271
0227	21 Oct. 2003	10,875 board ft. lumber (assorted sizes)	Annie Gonzales	1323273
0228	20 Oct. 2003	300 board ft. sliced lumber	Bernardo Gonzalvo	1482835
0229	17 Oct. 2003	6,090 board ft. lumber	Naty Orozco	1482834
0230	17 Oct. 2003	16 pcs. panel door (finished product)	Roy Justo	1482743
0231	01 Oct. 2003	300 board ft. good lumber (assorted sizes)	Analiza Vargas	1482710
0232	01 Oct. 2003	700 board ft. Malaruhat (assorted sizes)	Engr. Mercado	1482760
0233	30 Sept. 2003	500 board ft. sliced lumber (assorted sizes)	Mylene Moises	1482810
0234	29 Sept. 2003	800 board ft. good lumber (assorted sizes)	Wennie Acebuque	1482703
0235	15 Sept. 2003	1,500 board ft. malaruhat lumber (assorted sizes)	Decembrano Sabiduria	1323076
0236	10 Sept. 2003	200 board ft. good lumber (assorted sizes)	Junier Franquia	1323027

0237	29 Aug. 2003	600 board ft. good lumber	Annaliza Vargas	1322830
0238	07 Aug. 2003	2,000 board ft. lumber (assorted sizes)	Abilardo dela Cruz	1247200
0239	06 Aug. 2003	1,000 board ft. hardwood	Jennifer Nudalo	1322802
0240	25 June 2003	600 board ft. good lumber	Roy Justo	1247024
0241	26 May 2003	800 board ft. lumber	Adelino Lareza	3651096
0242	26 May 2003	Assorted sizes good lumber	Rollie Velasco	3651587
0243	23 May 2003	342 sliced lumber (assorted sizes)	Dolores S. Gloria	3651499
0244	20 May 2003	500 board ft. lumber	Marylyn de Loreto/ Melita Masilang	3651574
0245	02 May 2003	123 pieces sliced lumber (assorted sizes)	Armando Lariza	3651656
0246	17 Feb. 2003	70 pieces sliced lumber (assorted sizes)	Efren Tena/ Romeo Serafines	1182204
0247	07 Feb. 2003	1 piece narra bed; 1 piece narra panel door; 6 pcs. Refrigerator stand & 1 pc. Narra cabinet (finished product)	Roy D. Justo	1182060
0248	05 Dec. 2002	140 pcs. round poles	Lamberto R. Ruzol	0943647
0249	20 Nov. 2002	500 board ft. lumber (assorted sizes)	Luz Astoveza	0943618

0250	30 Oct. 2002	1,200 board ft. sliced lumber (assorted sizes)	Arceli Fortunado	0830698
0251	04 Oct. 2002	500 board ft. Huling Manok	Roy Justo	0830646
0252	27 Sept. 2002	300 board ft. sliced lumber (assorted sizes)	Roy Justo	0830625
0253	24 Sept. 2002	1,000 board ft. sliced lumber (assorted sizes)	Inna L. Customerado	0830771
0254	23 Sept. 2002	1,000 board ft. sliced lumber (assorted sizes)	Normelita L. Curioso	0830610
0255	03 Sept. 2002	2,000 pcs. trophy (wood carvings)	Floredeliza D. Espiritu	686642
0256	7 March 2002	2,000 sets trophy (wood carvings)	Floredeliza D. Espiritu	090549
0257	03 Dec. 2001	10,000 sets trophy (wood carvings)	Floredeliza D. Espiritu	090769
0258	12 Sept. 2001	1,075 board ft of sticks & 1,450 board ft. Bollilo (assorted sizes)	Lea A. Rivera	7786333
0259	07 Oct. 2003	Assorted lumber	Roy D. Justo	1482765

Considering that the facts are undisputed, the parties during Pre-Trial agreed to dispense with the presentation of testimonial evidence and submit the case for decision based on the documentary evidence and joint stipulation of facts contained in the Pre-Trial Order. Thereafter, the accused and the prosecution submitted their respective memoranda.[6]

[6] *Id.* at 157.

Ruzol's Defense

As summarized by the Sandiganbayan, Ruzol professes his innocence based on following arguments:

(1) As Chief Executive of the municipality of General Nakar, Quezon, he is authorized to issue permits to transport forest products pursuant to RA 7160 which give the LGU not only express powers but also those powers that are necessarily implied from the powers expressly granted as well as those that are necessary, appropriate or incidental to the LGU's efficient and effective governance. The LGU is likewise given powers that are essential to the promotion of the general welfare of the inhabitants. The general welfare clause provided in Section 16, Chapter 2, Title One, Book I of R.A. 7160 is a massive grant of authority that enables LGUs to perform or exercise just about any power that will benefit their local constituencies.

(2) In addition to the foregoing, R.A. 7160 has devolved certain functions and responsibilities of the DENR to the LGU. And the permits to transport were issued pursuant to the devolved function to manage and control communal forests with an area not exceeding fifty (50) square kilometers.

(3) The Permits to Transport were issued as an incident to the payment of Transport Fees levied by the municipality for the use of local public roads for the transport of salvaged forest products. Under (a) Section 5, Article X of the Constitution, (b) Section 129, Chapter I, Title One Book II of R.A. 7160, and (c) Section 186, Article Five, Chapter 5, Tile One, Book II of R.A. 7160, the municipality is granted the power to create its own sources of revenue and to levy fees in accordance therewith.

(4) The only kind of document the DENR issues relating to log, timber or lumber is denominated "Certificate of Timber Origin" or CTO for logs and "Certificate of Lumber Origin" or CLO for lumber; hence, even if accused issued the Transport Permits on his side, a person wanting to transport the said forest products would have to apply and obtain a CTO or CLO from the DENR. The Transport Permits issued by the accused were never taken as a substitute for the CTO or

CLO, and this is the reason why said permits contain the annotation "Subject to DENR rules, laws and regulations."

(5) There is no proof of conspiracy between the accused. The Transport Permits were issued by accused Sabiduria in his capacity as Municipal Administrator and his mere issuance is not enough to impute upon the accused Ruzol any transgression or wrongdoing that may have been committed in the issuance thereof following the ruling in *Arias v. Sandiganbayan* (180 SCRA 309).

(6) The DENR directly sanctioned and expressly authorized the issuance of the 221 Transport permits through the Provincial Environment and natural Resources officer Rogelio Delgado Sr., in a Multi-Sectoral Consultative Assembly.

(7) The accused cannot be convicted of Usurpation of Authority since they did not act "under the pretense of official position," accused Ruzol having issued the permits in his capacity as Mayor and there was no pretense or misrepresentation on his part that he was an officer of DENR.[7]

Ruling of the Sandiganbayan

After due consideration, the Sandiganbayan rendered on December 19, 2008 a Decision, acquitting Sabiduria but finding Ruzol guilty as charged, to wit:

WHEREFORE, premises considered, the Court resolves these cases as follows:

1. Against the accused LEOVEGILDO R. RUZOL, judgment is hereby rendered finding him GUILTY beyond reasonable doubt of Two Hundred Twenty One (221) counts of the offense of Usurpation of Official Functions as defined and penalized under Article 177 of the Revised Penal Code and hereby sentences him to suffer for each case a straight penalty of SIX (6) MONTHS and ONE (1) DAY.

However, in the service of his sentences, accused Ruzol shall be entitled to the benefit of the three-fold rule as provided in Article 70 of the Revised Penal Code, as amended.

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[7] *Id.* at 159-161.

2. On the ground of reasonable doubt, accused GUILLERMO M. SABIDURIA is ACQUITTED of all 221 charges. The cash bond posted by him for his provisional liberty may now be withdrawn by said accused upon presentation of the original receipt evidencing payment thereof subject to the usual accounting and auditing procedures. The hold departure procedure issued by this Court dated 16 April 2008 is set aside and the Order issued by the Bureau of Immigration dated 29 April 2008 including the name of Sabiduria in the Hold Departure List is ordered recalled and cancelled.

SO ORDERED.[8]

The Sandiganbayan predicated its ruling on the postulate that the authority to issue transport permits with respect to salvaged forest products lies with the Department of Environment and Natural Resources (DENR) and that such authority had not been devolved to the local government of General Nakar.[9] To the graft court, Ruzol's issuance of the subject permits constitutes usurpation of the official functions of the DENR.

The Issue

The critical issue having a determinative bearing on the guilt or innocence of Ruzol for usurpation revolves around the validity of the subject permits to transport, which in turn resolves itself into the question of whether the authority to monitor and regulate the transportation of salvaged forest product is *solely* with the DENR, and no one else.

The Ruling of this Court

The petition is partly meritorious.

Subsidiary Issue:

Whether the Permits to Transport Issued by Ruzol Are Valid

In ruling that the DENR, and not the local government units (LGUs), has the authority to issue transportation permits of

[8] *Id.* at 193-194.

[9] *Id.* at 161.

salvaged forest products, the Sandiganbayan invoked Presidential Decree No. 705 (PD 705), otherwise known as the *Revised Forestry Code of the Philippines* and in relation to Executive Order No. 192, Series of 1987 (EO 192), or the *Reorganization Act of the Department of Environment and Natural Resources*.

Section 5 of PD 705 provides:

Section 5. *Jurisdiction of Bureau*. The Bureau [of Forest Management] shall have jurisdiction and authority over all forest land, grazing lands, and all forest reservations including watershed reservations presently administered by other government agencies or instrumentalities.

It shall be responsible for the protection, development, management, regeneration, and reforestation of forest lands; the regulation and supervision of the operation of licensees, lessees and permittees for the taking or use of forest products therefrom or the occupancy or use thereof; the implementation of multiple use and sustained yield management in forest lands; the protection, development and preservation of national parks, marine parks, game refuges and wildlife; the implementation of measures and programs to prevent kaingin and managed occupancy of forest and grazing lands; in collaboration with other bureaus, the effective, efficient and economic classification of lands of the public domain; and the enforcement of forestry, reforestation, parks, game and wildlife laws, rules, and regulations.

The Bureau shall regulate the establishment and operation of sawmills, veneer and plywood mills and other wood processing plants and conduct studies of domestic and world markets of forest products. (Emphasis Ours.)

On the other hand, the pertinent provisions of EO 192 state:

SECTION 4. *Mandate*. **The Department shall be the *primary government agency* responsible for the conservation, management, development, and proper use of the country's environment and natural resources, specifically forest and grazing lands of the public domain, as well as the licensing and regulation of all natural resources** as maybe provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos.

x x x x x x x x x

SECTION 5. *Powers and Functions*. To accomplish its mandate, the Department shall have the following functions:

x x x x x x x x x

(d) **Exercise supervision and control over forest lands**, alienable and disposal lands, and mineral resources and **in the process of exercising such control the Department shall impose appropriate payments, fees, charges, rentals and any such revenues for the exploration, development, utilization or gathering of such resources.**

x x x x x x x x x

(j) **Regulate the development, disposition, extraction, exploration and use of the country's forest, land and mineral resources**;

(k) **Assume responsibility for the assessment, development, protection, conservation, licensing and regulation as provided for by law, where applicable, of all natural resources; the regulation and monitoring of service contractors, licensees, lessees, and permittees for the extraction, exploration, development and utilization of natural resources products**; the implementation of programs and measures with the end in view of promoting close collaboration between the government and the private sector; the effective and efficient classification and sub-classification of lands of the public domain; and the enforcement of natural resources laws, rules and regulations;

(l) **Promulgate rules, regulations and guidelines on the issuance** of co-production, joint venture or production sharing agreements, licenses, **permits**, concessions, leases and **such other privileges and arrangement concerning the development, exploration and utilization of the country's natural resources and shall continue to oversee, supervise and police our natural resources**; to cancel or cause to cancel such privileges and arrangement upon failure, non-compliance or violations of any regulations, orders, and for all other causes which are furtherance of the conservation of natural resources and supportive of the national interests;

x x x x x x x x x

(n) **Implement measures for the regulation and supervision of the processing of forest products**, grading and inspection of lumber

and other forest products and monitoring of the movement of timber and other forest products. (Emphasis Ours.)

Invoked too is DENR Administrative Order No. 2000-78 (DAO 2000-78) which mandates that the permittee should secure the necessary transport and other related documents before the retrieved wood materials are sold to the buyers/users and/or wood processing plants.[10] DAO 2000-78 obliges the entity or person concerned to secure a **Wood Recovery Permit**––a "permit issued by the DENR to gather/retrieve and dispose abandoned logs, drifted logs, sunken logs, uprooted, and fire and typhoon damaged tress, tree stumps, tops and branches."[11] It prescribes that the permittee shall only be allowed to gather or recover logs or timber which had already been marked and inventoried by the Community Environment and Natural Resources Officer.[12] To the Sandiganbayan, this mandatory requirement for Wood Recovery Permit illustrates that DENR is the sole agency vested with the authority to regulate the transportation of salvaged forest products.

The Sandiganbayan further reasoned that the "monitoring and regulating salvaged forest products" is not one of the DENR's functions which had been devolved upon LGUs. It cited Sec. 17 of Republic Act No. 7160 (RA 7160) or the Local Government Code (LGC) of 1991 which provides:

Section 17. *Basic Services and Facilities.* -

(a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also **discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code.** Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are **necessary, appropriate, or incidental to**

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[10] DAO 2000-78, entitled *Regulations in the Recovery and Disposition, Abandoned Logs, Drifted Logs, Sunken Logs, Uprooted, and Fire/Typhoon Damaged Trees, Tree Stumps, Tops and Branches*, Sec. 5.4.

[11] *Id.*, Sec. 2.8.

[12] *Id.*, Sec. 5.3.

efficient and effective provisions of the basic services and facilities enumerated herein.

x x x x x x x x x

(2) For a *Municipality*:

x x x x x x x x x

(ii) Pursuant to national policies and subject to supervision, control and review of the DENR, **implementation of community-based forestry projects** which include integrated social forestry programs and similar projects; **management and control of communal forests** with an area not exceeding fifty (50) square kilometers; **establishment of tree parks, greenbelts, and similar forest development projects**. (Emphasis Ours.)

According to the Sandiganbayan, Sec. 17 of the LGC has limited the devolved functions of the DENR to the LGUs to the following: (1) the **implementation of community-based forestry products**; (2) **management and control of communal forests** with an area not exceeding fifty (50) square kilometers; and (3) establishment of tree parks, greenbelts and similar forest development projects.[13] It also referred to DENR Administrative Order No. 30, Series of 1992 (DAO 1992-30), which enumerates the forest management functions, programs and projects of the DENR which had been devolved to the LGUs, as follows:[14]

Section 3.1 Forest Management

a. Implementation of the following community-based forestry projects:

   i. Integrated Social Forestry Projects, currently funded out of regular appropriations, except at least one project per province that shall serve as research and training laboratory, as identified by the DENR, and those areas located in protected areas and critical watersheds;

   ii. Establishment of new regular reforestation projects, except those areas located in protected areas and critical watersheds;

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[13] *Rollo*, p. 166.

[14] DAO 1992-30, entitled *Guidelines for the Transfer and Implementation of DENR Functions Devolved to Local Government Units*.

iii. Completed family and community-based contract reforestation projects, subject to policies and procedures prescribed by the DENR;

iv. Forest Land Management Agreements in accordance with DENR Administrative Order No. 71, Series of 1990 and other guidelines that the DENR may adopt; and

v. Community Forestry Projects, subject to concurrence of financing institution(s), if foreign assisted.

b. Management and control of communal forests with an area not exceeding fifty (50) square kilometers or five thousand (₱5,000) hectares, as defined in Section 2, above. Provided, that the concerned LGUs shall endeavor to convert said areas into community forestry projects;

c. Management, protection, rehabilitation and maintenance of small watershed areas which are sources of local water supply as identified or to be identified by the DENR; and

d. Enforcement of forest laws in community-based forestry project areas, small watershed areas and communal forests, as defined in Section 2 above, such as but not limited to:

i. Prevention of forest fire, illegal cutting and kaingin;

ii. Apprehension of violators of forest laws, rules and regulations;

iii. Confiscation of illegally extracted forest products on site;

iv. Imposition of appropriate penalties for illegal logging, smuggling of natural resources products and of endangered species of flora and fauna, slash and burn farming and other unlawful activities; and

v. Confiscation, forfeiture and disposition of conveyances, equipment and other implements used in the commission of offenses penalized under P.D. 705 as amended by E.O. 277, series of 1987 and other forestry laws, rules and regulations.

Provided, that the implementation of the foregoing activities outside the devolved areas above mentioned, shall remain with the *DENR.*

The Sandiganbayan ruled that since the authority relative to salvaged forest products was not included in the above enumeration of devolved functions, the correlative authority to issue transport permits remains with the DENR[15] and, thus, cannot be exercised by the LGUs.

We disagree and refuse to subscribe to this postulate suggesting exclusivity. As shall be discussed shortly, the LGU also has, under the LGC of 1991, ample authority to promulgate rules, regulations and ordinances to monitor and regulate salvaged forest products, *provided* that the parameters set forth by law for their enactment have been faithfully complied with.

While the DENR is, indeed, the primary government instrumentality charged with the mandate of promulgating rules and regulations for the protection of the environment and conservation of natural resources, it is not the only government instrumentality clothed with such authority. While the law has designated DENR as the primary agency tasked to protect the environment, it was not the intention of the law to arrogate unto the DENR the exclusive prerogative of exercising this function. Whether in ordinary or in legal parlance, the word "primary" can never be taken to be synonymous with "sole" or "exclusive." In fact, neither the pertinent provisions of PD 705 nor EO 192 suggest that the DENR, or any of its bureaus, shall exercise such authority to the exclusion of all other government instrumentalities, *i.e.*, LGUs.

On the contrary, the claim of DENR's supposedly exclusive mandate is easily negated by the principle of local autonomy enshrined in the 1987 Constitution[16] in relation to the general welfare clause under Sec. 16 of the LGC of 1991, which provides:

Section 16. *General Welfare.* - Every local government unit shall exercise the powers ***expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance***, and those which are

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[15] *Rollo,* p. 166.

[16] Art. X, Sec. 2. The territorial and political subdivisions shall enjoy local autonomy.

essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, ***enhance the right of the people to a balanced ecology***, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants. (Emphasis Ours.)

Pursuant to the aforequoted provision, municipal governments are clothed with authority to enact such ordinances and issue such regulations as may be necessary to carry out and discharge the responsibilities conferred upon them by law, and such as shall be necessary and proper to provide for the health, safety, comfort and convenience, maintain peace and order, improve public morals, promote the prosperity and general welfare of the municipality and its inhabitants, and ensure the protection of property in the municipality.[17]

As held in *Oposa v. Factoran, Jr.*,[18] the right of the people "to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment." In ensuring that this duty is upheld and maintained, a local government unit may, if it deems necessary, promulgate ordinances aimed at enhancing the right of the people to a balanced ecology and, accordingly, provide adequate measures in the proper utility and conservation of natural resources within its territorial jurisdiction. As can be deduced from Ruzol's memoranda, as affirmed by the parties in their Joint Stipulation of Facts, it was in the pursuit of this objective that the subject permits to transport were issued by Ruzol—to regulate the salvaged forest products found within the municipality of General Nakar and, hence, prevent abuse and occurrence of any untoward illegal logging in the area.[19]

[17] *Binay v. Domingo*, G.R. No. 92389, September 11, 1991, 201 SCRA 508, 514.

[18] G.R. No. 101083, July 30, 1993, 224 SCRA 792, 805.

[19] *Rollo*, pp. 156, 187.

In the same vein, there is a clear merit to the view that the monitoring and regulation of salvaged forest products through the issuance of appropriate permits is a **shared responsibility** which may be done either by DENR or by the LGUs or by both. DAO 1992-30, in fact, says as much, thus: the "**LGUs shall share with the national government, particularly the DENR, the responsibility in the sustainable management and development of the environment and natural resources within their territorial jurisdiction**."[20] The significant role of the LGUs in environment protection is further echoed in Joint Memorandum Circular No. 98-01(JMC 1998-01) or the *Manual of Procedures for DENR-DILG-LGU Partnership on Devolved and other Forest Management Functions*, which was promulgated *jointly* by the DILG and the DENR in 1998, and provides as follows:

Section 1. *Basic Policies*

Subject to the general policies on devolution as contained in RA 7160 and DENR Administrative Order No. 30, Series of 1992, the following basic policies shall govern the implementation of DENR-DILG-LGU partnership on devolved and other forest management functions:

1.1. The *Department of Environment and Natural Resources (DENR) shall be the primary government agency* responsible for the conservation, management, protection, proper use and sustainable development of the country's environment and natural resources.

1.2. The LGUs shall share with DENR the responsibility in the sustainable management and development of the forest resources within their territorial jurisdiction. Toward this end, the **DENR and the LGUs shall endeavor to strengthen their collaboration and partnership in forest management.**

1.3. Comprehensive land use and forest land use plans are important tools in the holistic and efficient management of forest resources. Toward this end, **the DENR and the LGUs together with other government agencies shall undertake forest land use planning as an integral activity of comprehensive land use**

[20] Sec. 1.2.

planning to determine the optimum and balanced use of natural resources to support local, regional and national growth and development.

1.4. To **fully prepare the LGUs to undertake their shared responsibilities in the sustainable management of forest land resources, the DENR, in coordination with DILG, shall enhance the capacities of the LGUs in the various aspects of forest management.** Initially, the DENR shall coordinate, guide and train the LGUs in the management of the devolved functions. **As the LGUs' capacity in forest management is enhanced, the primary tasks in the management of devolved functions shall be performed by the LGUs and the role of the DENR becomes assistive and coordinative.**

1.5. To further the ends of local autonomy, **the DENR in consultation with the LGUs shall devolved** [sic] **additional functions and responsibilities to the local government units,** or enter into agreements with them for enlarged forest management and other ENR-related functions.

1.6. To seek advocacy, popular support and ultimately help achieve community empowerment, DENR and DILG shall forge the partnership and cooperation of the LGUs and other concerned sectors in seeking and strengthening the participation of local communities for forest management including enforcement of forestry laws, rules and regulations. (Emphasis Ours.)

To our mind, the requirement of permits to transport salvaged forest products is not a manifestation of usurpation of DENR's authority but rather an *additional measure* which was *meant to complement* DENR's duty to regulate and monitor forest resources within the LGU's territorial jurisdiction.

This is consistent with the "canon of legal hermeneutics that instead of pitting one statute against another in an inevitably destructive confrontation, courts must exert every effort to reconcile them, remembering that both laws deserve respect as the handiwork of coordinate branches of the government."[21]

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[21] *Batangas CATV, Inc. v. Court of Appeals*, G.R. No. 138810, September 29, 2004, 439 SCRA 326, 345.

Hence, if there appears to be an apparent conflict between promulgated statutes, rules or regulations issued by different government instrumentalities, the proper action is not to immediately uphold one and annul the other, but rather give effect to both by harmonizing them if possible.[22] Accordingly, although the DENR requires a Wood Recovery Permit, an LGU is not necessarily precluded from promulgating, pursuant to its power under the general welfare clause, complementary orders, rules or ordinances to monitor and regulate the transportation of salvaged forest products.

Notwithstanding, We still find that **the Permits to Transport issued by Ruzol are invalid for his failure to comply with the procedural requirements set forth by law for its enforcement**.

Then and now, Ruzol insists that the Permit to Transport partakes the nature of transport fees levied by the municipality for the use of public roads.[23] In this regard, he argues that he has been conferred by law the right to issue subject permits as an incident to the LGU's power to create its own sources of revenue pursuant to the following provisions of the LGC:

Section 153. *Service Fees and Charges.* – Local government units may ***impose and collect such reasonable fees and charges*** for services rendered.

x x x x x x x x x

Section 186. *Power to Levy Other Taxes, Fees or Charges.* – Local government units may **exercise the power to levy** taxes, **fees** or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: Provided, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: Provided, further, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose. (Emphasis Ours.)

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[22] *Id.*

[23] *Rollo,* p. 159.

Ruzol further argued that the permits to transport were issued under his power and authority as Municipal Mayor under Sec. 444 of the same law:

> (iv) **Issue licenses and permits** and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, **pursuant to law or ordinance**;
>
> x x x x x x x x x
>
> vii) **Adopt adequate measures to safeguard and conserve** land, mineral, marine, **forest, and other resources of the municipality**; provide efficient and effective property and supply management in the municipality; and protect the funds, credits, rights and other properties of the municipality. (Emphasis Ours.)

Ruzol is correct to a point. Nevertheless, We find that an enabling ordinance is necessary to confer the subject permits with validity. As correctly held by the Sandiganbayan, the power to levy fees or charges under the LGC is exercised by the Sangguniang Bayan through the enactment of an appropriate ordinance wherein the terms, conditions and rates of the fees are prescribed.[24] Needless to say, one of the fundamental principles of local fiscal administration is that "local revenue is generated only from sources expressly authorized by law or ordinance."[25]

It is likewise expressly stated in Sec. 444(b)(3)(iv) of the LGC that the authority of the municipal mayor to issue licenses and permits should be "pursuant to a law or ordinance." It is the Sangguniang Bayan, as the legislative body of the municipality, which is mandated by law to enact ordinances against acts which endanger the environment, *i.e.*, illegal logging, and smuggling of logs and other natural resources.[26]

In this case, an examination of the pertinent provisions of General Nakar's *Revised Municipal Revenue Code*[27] and

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[24] *Id.* at 188.

[25] LOCAL GOVERNMENT CODE, Sec. 305.

[26] *Id.*, Sec. 447(a)(1)(u).

[27] *Rollo*, pp. 461-578.

Municipal Environment Code[28] reveals that there is no provision unto which the issuance of the permits to transport may be grounded. Thus, in the absence of an ordinance for the regulation and transportation of salvaged products, the permits to transport issued by Ruzol are infirm.

Ruzol's insistence that his actions are pursuant to the LGU's devolved function to "manage and control communal forests" under Sec. 17 of the LGC and DAO 1992-30[29] is specious. Although We recognize the LGU's authority in the management and control of communal forests within its territorial jurisdiction, We reiterate that this authority should be exercised and enforced in accordance with the procedural parameters established by law for its effective and efficient execution. As can be gleaned from the same Sec. 17 of the LGC, the LGU's authority to manage and control communal forests should be "pursuant to national policies and is subject to supervision, control and review of DENR."

As correctly held by the Sandiganbayan, the term "communal forest"[30] has a well-defined and technical meaning.[31] Consequently, as an entity endowed with specialized competence and knowledge on forest resources, the DENR cannot be discounted in the establishment of communal forest. The DILG, on behalf of the LGUs, and the DENR promulgated JMC 1998-01 which outlined the following procedure:

Section 8.4 Communal Forest

8.4.1 *Existing Communal Forest*

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[28] *Id.* at 657-670.

[29] *Id.* at 64-65.

[30] DAO 1992-30, Sec. 2.3. *Communal Forest*. — Refers to a tract of forest land set aside by the Secretary of the DENR for the use of the residents of a municipality from which said residents may cut, collect and remove forest products for their personal use in accordance with existing laws and regulations.

[31] *Rollo,* p. 171.

The devolution to and management of the communal forest by the city and municipal governments shall be governed by the following general procedures:

(a) DENR, through its CENRO, and the concerned LGU shall undertake the **actual identification and assessment of existing communal forests**. The assessment shall determine the suitability of the existing communal forests. If these are no longer suitable, then these communal forests may be disestablished. The Approval for disestablishment shall be by the RED upon recommendation of the DENR-LGU assessment Team through the PENRO and the RTD for Forestry;

(b) Existing communal forest which are found and recommended by the DENR-LGU Assessment Team as still suitable to achieve their purpose shall be maintained as such. Thereafter, **the Sangguniang Panglungsod or Sangguniang Bayan where the communal forest is located shall pass resolution requesting the DENR Secretary for the turnover of said communal forest to the city or municipality.** Upon receipt of said resolution, the DENR Secretary shall issue an Administrative Order officially transferring said communal forest to the concerned LGU. The DENR RED shall effect the official transfer to the concerned LGU within fifteen (15) days from the issuance of the administrative order;

(c) Within twelve months from the issuance of the Administrative Order and turnover of said communal forest to the city or municipality, **the LGU to which the communal forest was transferred shall formulate and submit to the Provincial ENR Council for approval a management plan governing the sustainable development of the communal forest.**

For the purpose of formulating the communal forest management plan, DENR shall, in coordination with the concerned LGU, undertake a forest resource inventory and determine the sustainable level of forest resource utilization and provide the LGU technical assistance in all facets of forest management planning to ensure sustainable development. The management plan should include provision for replanting by the communities and the LGUs of the communal forests to ensure sustainability.

8.4.2 *Establishment of New Communal Forest*

The establishment of new communal forests shall be governed by the following guidelines:

(a) DENR, through its CENRO, together with the concerned city/municipal LGU shall jointly **identify potential communal forest** areas within the geographic jurisdiction of the concerned city/municipality.

(b) Communal forests to be established shall be identified through a forest land use planning to be undertaken jointly between the DENR and the concerned LGU. The ensuing **forest land use plan** shall indicate, among others, the site and location of the communal forests within the production forest categorized as such in the forest land use plan;

(c) Once the forest land use plan has been affirmed, the local chief executive shall initiate the passage by the LGU's sanggunian of a **resolution requesting the DENR Secretary to issue an Administrative Order declaring the identified area as a communal forest.** The required administrative order shall be issued within sixty (60) days after receipt of the resolution;

(d) Upon acceptance of the responsibility for the communal forest, the city/municipal LGU shall formulate the management plan and submit the same to its ENR Council. The management plan shall include provision for replanting by the communities and the LGUs of the communal forests to ensure sustainability.

The communal forests of each municipality shall in no case exceed a total of 5,000 hectares. (Emphasis Ours.)

It is clear, therefore, that before an area may be considered a communal forest, the following requirements must be accomplished: (1) an **identification** of potential communal forest areas within the geographic jurisdiction of the concerned city/municipality; (2) a **forest land use plan** which shall indicate, among other things, the site and location of the communal forests; (3) a **request** to the DENR Secretary through a **resolution passed by the Sangguniang Bayan** concerned; and (4) an

administrative order issued by DENR Secretary **declaring the identified area as a communal forest**.

In the present case, the records are bereft of any showing that these requirements were complied with. Thus, in the absence of an established communal forest within the Municipality of General Nakar, there was no way that the subject permits to transport were issued as an incident to the management and control of a communal forest.

This is not to say, however, that compliance with abovementioned statutory requirements for the issuance of permits to transport foregoes the necessity of obtaining the Wood Recovery Permit from the DENR. As earlier discussed, the permits to transport may be issued to complement, and not substitute, the Wood Recovery Permit, and may be used only as an additional measure in the regulation of salvaged forest products. **To elucidate, a person seeking to transport salvaged forest products still has to acquire a Wood Recovery Permit from the DENR as a prerequisite before obtaining the corresponding permit to transport issued by the LGU**.

Main Issue:
Whether Ruzol Is Guilty of Usurpation of Official Functions

The foregoing notwithstanding, **Ruzol cannot be held guilty** of Usurpation of Official Functions as defined and penalized under Art. 177 of the RPC, to wit:

> **Art. 177.** *Usurpation of authority or official functions.* — Any person who shall *knowingly and falsely represent himself* to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, **or** who, *under pretense of official position*, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prision correccional* in its minimum and medium periods. (Emphasis Ours.)

As the aforementioned provision is formulated, there are two ways of committing this crime: *first*, by knowingly and

falsely representing himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government; or *second*, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so.[32] The former constitutes the crime of **usurpation of authority**, while the latter act constitutes the crime of **usurpation of official functions**.[33]

In the present case, Ruzol stands accused of **usurpation of official functions** for issuing 221 **permits to transport** salvaged forest products under the alleged "pretense of official position and without being lawfully entitled to do so, such authority properly belonging to the Department of Environment and Natural Resources."[34] The Sandiganbayan ruled that all the elements of the crime were attendant in the present case because the authority to issue the subject permits belongs solely to the DENR.[35]

We rule otherwise.

First, it is settled that an accused in a criminal case is presumed innocent until the contrary is proved and that to overcome the presumption, nothing but proof beyond reasonable doubt must be established by the prosecution.[36] As held by this Court in *People v. Sitco*:[37]

The imperative of proof beyond reasonable doubt has a vital role in our criminal justice system, the accused, during a criminal prosecution, having a stake interest of immense importance, both

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[32] L.B. Reyes, *THE REVISED PENAL CODE, BOOK TWO* 241-242 (2006).

[33] *Gigantoni v. People*, No. 74727, June 16, 1988, 162 SCRA 158, 162-163.

[34] *Rollo*, p. 18.

[35] *Id.* at 191.

[36] RULES OF COURT, Rule 133, Sec. 2.

[37] G.R. No. 178202, May 14, 2010, 620 SCRA 561, 574.

because of the possibility that he may lose his freedom if convicted and *because of the certainty that his conviction will leave a permanent stain on his reputation and name*. (Emphasis supplied.)

Citing *Rabanal v. People*,[38] the Court further explained:

> Law and jurisprudence demand proof beyond reasonable doubt before any person may be deprived of his life, liberty, or even property. Enshrined in the Bill of Rights is the right of the petitioner to be presumed innocent until the contrary is proved, and to overcome the presumption, nothing but proof beyond reasonable doubt must be established by the prosecution. **The constitutional presumption of innocence requires courts to take "a more than casual consideration" of every circumstance of doubt proving the innocence of petitioner**. (Emphasis added.)

Verily, an accused is entitled to an acquittal unless his or her guilt is shown beyond reasonable doubt and it is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion, with moral certainty.[39] As explained by this Court in *People v. Berroya*:[40]

> The necessity for proof beyond reasonable doubt lies in the fact that "(i)n a criminal prosecution, the State is arrayed against the subject; it enters the contest with a prior inculpatory finding in its hands; with unlimited means of command; with counsel usually of authority and capacity, who are regarded as public officers, and therefore as speaking semi-judicially, and with an attitude of tranquil majesty often in striking contrast to that of defendant engaged in a perturbed and distracting struggle for liberty if not for life. These inequalities of position, the law strives to meet by the rule that there is to be no conviction when there is a reasonable doubt of guilt."

Indeed, proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty; moral certainly only is required, or that degree of

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[38] G.R. No. 160858, February 28, 2006, 483 SCRA 601, 617.

[39] *Amanquiton v. People*, G.R. No. 186080, August 14, 2009, 596 SCRA 366, 373.

[40] 347 Phil. 410, 423 (1997).

proof which produces conviction in an unprejudiced mind.[41] However, contrary to the ruling of the Sandiganbayan, We find that a careful scrutiny of the events surrounding this case **failed to prove** that Ruzol is guilty beyond reasonable doubt of committing the crime of usurpation of official functions of the DENR.

We note that this case of usurpation against Ruzol rests principally on the prosecution's theory that the DENR is the only government instrumentality that can issue the permits to transport salvaged forest products. The prosecution asserted that Ruzol usurped the official functions that properly belong to the DENR.

But erstwhile discussed at length, the DENR is not the sole government agency vested with the authority to issue permits relevant to the transportation of salvaged forest products, considering that, pursuant to the general welfare clause, LGUs may also exercise such authority. Also, as can be gleaned from the records, the **permits to transport were meant to complement and not to replace** the Wood Recovery Permit issued by the DENR. In effect, Ruzol required the issuance of the subject permits under his authority as municipal mayor and independently of the official functions granted to the DENR. The records are likewise bereft of any showing that Ruzol made representations or false pretenses that said permits could be used in lieu of, or at the least as an excuse not to obtain, the Wood Recovery Permit from the DENR.

Second, contrary to the findings of the Sandiganbayan, **Ruzol acted in good faith**.

It bears stressing at this point that in *People v. Hilvano*,[42] this Court enunciated that good faith is a defense in criminal prosecutions for usurpation of official functions.[43] The term

[41] RULES OF COURT, Rule 133, Sec. 2.

[42] 99 Phil. 655, 657 (1956).

[43] In *Hilvano*, the accused was initially prosecuted for and convicted of "usurpation of public authority" as defined in **RA 10**. However, it was later found out that RA 10 was no longer applicable and that the applicable

"good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."[44] Good faith is actually a question of intention and although something internal, it can be ascertained by relying not on one's self-serving protestations of good faith but on evidence of his conduct and outward acts.[45]

In dismissing Ruzol's claim of good faith, the Sandiganbayan reasoned as follows:

> If it is really true that Ruzol believed himself to be authorized under R.A. 7160 to issue the subject permits, why did he have to secure the approval of the various NGOs, People's Organizations and religious organizations before issuing the said permits? **He could very well have issued subject permits even without the approval of these various organizations if he truly believed that he was legally empowered to do so** considering that the endorsement of these organizations is not required by law. That **Ruzol had to arm himself with their endorsement could only mean that he actually knew that he had no legal basis for issuing the said permits; thus he had to look elsewhere for support and back-up**.[46] (Emphasis Ours.)

We, however, cannot subscribe to this posture as there is neither legal basis nor established doctrine to draw a conclusion

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law is Art. 177 of the RPC, as amended by RA 379. Apparently, the crime of "usurpation of public authority" as designated in RA 10 was **redefined** and is presently what we refer to as "usurpation of official functions" defined and penalized under the second portion of Art. 177 of the RPC. In effect, **Hilvano was convicted not of usurpation of authority but of usurpation of official functions**.

[44] *Civil Service Commission v. Maala*, G.R. No. 165253, August 18, 2005, 467 SCRA 390, 399; citations omitted.

[45] *Id.*; citing *Gabriel v. Mabanta*, G.R. No. 142403, March 26, 2003, 399 SCRA 573.

[46] *Rollo*, p. 180.

that good faith is negated when an accused sought another person's approval. Neither is there any doctrine in law which provides that bad faith is present when one seeks the opinion or affirmation of others.

Contrary to the conclusions made by the Sandiganbayan, We find that the conduct of the public consultation was not a badge of bad faith, but a sign supporting Ruzol's good intentions to regulate and monitor the movement of salvaged forest products to prevent abuse and occurrence of untoward illegal logging. In fact, the records will bear that the requirement of permits to transport was not Ruzol's decision alone; it was, as earlier narrated, a result of the collective decision of the participants during the Multi-Sectoral Consultative Assembly. As attested to by Bishop Julio Xavier Labayen, it was the participants who agreed that the subject permits be issued by the Office of the Mayor of General Nakar, through Ruzol, in the exercise of the latter's authority as local chief executive.[47]

The Sandiganbayan also posits the view that Ruzol's good faith is negated by the fact that if he truly believed he was authorized to issue the subject permits, Ruzol did not have to request the presence and obtain the permission of PENRO Rogelio Delgado Sr. during the Multi-Sectoral Assembly.[48]

The graft court's above posture, however, does not commend itself for concurrence. If, indeed, Ruzol willfully and deliberately intended to usurp the official functions of the DENR as averred by the prosecution, he would not have asked the presence of a DENR official who has the authority and credibility to publicly object against Ruzol's allegedly intended usurpation. Thus, the presence of PENRO Delgado during the Multi-Sectoral Assembly does not negate, but strengthens Ruzol's claim of good faith.

As a final note, We emphasize that the burden of protecting the environment is placed not on the shoulders of DENR alone––each and every one of us, whether in an official or private

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[47] *Id.* at 156.

[48] *Id.* at 181.

capacity, has his or her significant role to play. Indeed, protecting the environment is not only a responsibility but also a right for which a citizen could and should freely exercise. Considering the rampant forest denudation, environmental degradation and plaguing scarcity of natural resources, each of us is now obligated to contribute and share in the responsibility of protecting and conserving our treasured natural resources.

Ruzol chose to exercise this right and to share in this responsibility by exercising his authority as municipal mayor––an act which was executed with the concurrence and cooperation of non-governmental organizations, industry stakeholders, and the concerned citizens of General Nakar. Admittedly, We consider his acts as invalid but it does necessarily mean that such mistakes automatically demand Us to rule a conviction. This is in consonance with the settled principle that **"all reasonable doubt intended to demonstrate error and not crime should be indulged in for the benefit of the accused."**[49]

Under our criminal judicial system, "evil intent must unite with the unlawful act for a crime to exist," as "there can be no crime when the criminal mind is wanting."[50] ***Actus non facit reum, nisi mens sit rea***.

In the present case, the **prosecution has failed to prove beyond reasonable doubt that Ruzol possessed that "criminal mind" when he issued the subject permits**. What is clear from the records is that Ruzol, as municipal mayor, intended to regulate and monitor salvaged forest products within General Nakar in order to avert the occurrence of illegal logging in the area. We find that to hold him criminally liable for these seemingly noble intentions would be a step backward and would run contrary to the standing advocacy of encouraging people to take a pro-active stance in the protection of the environment and conservation of our natural resources.

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[49] L.B. Reyes, *THE REVISED PENAL CODE, BOOK TWO* 48 (2006).

[50] *Bahilidad v. People*, G.R. No. 185195, March 17, 2010, 615 SCRA 597, 608.

Incidentally, considering the peculiar circumstances of the present case and considering further that this case demands **only** the **determination of Ruzol's guilt or innocence for usurpation of official functions under the RPC**, for which the issue on the validity of the subject Permits to Transport is **only subsidiary**, We hereby resolve this case only for this purpose and only in this instance, *pro hac vice*, and, in the interest of justice, rule in favor of Ruzol's acquittal.

IN VIEW OF THE FOREGOING, the December 19, 2008 Decision of the Sandiganbayan First Division in Criminal Case Nos. SB-08-CRIM-0039 to 0259, finding Leovegildo R. Ruzol guilty of violating Art. 177 of the Revised Penal Code, is hereby **REVERSED** and **SET ASIDE.**

Accused Leovegildo R. Ruzol is, thus, **ACQUITTED** on the basis of reasonable doubt of the crimes as charged.

SO ORDERED.

Leonardo-de Castro,[*] *Abad, Mendoza,* and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 187232. April 17, 2013]

ZENAIDA D. MENDOZA, *petitioner, vs.* **HMS CREDIT CORPORATION and/or FELIPE R. DIEGO, MA. LUISA B. DIEGO, HONDA MOTOR SPORTS CORPORATION and/or FELIPE R. DIEGO, MA. LUISA B. DIEGO, BETA MOTOR TRADING INCORPORATED and/or FELIPE DIEGO, MA. LUISA B. DIEGO, JIANSHE CYCLE WORLD**

[*] Additional member per raffle dated September 16, 2009.

INCORPORATED and/or JOSE B. DIEGO, *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; APPEAL TO THE NATIONAL LABOR RELATIONS COMMISSION; WHEN APPEAL WAS TIMELY FILED ON ACCOUNT OF SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENT OF POSTING OF A BOND.— In the case at bar, respondents filed a Motion to Reduce Appeal Bond, tendering the sum of ₱650,000 – instead of the ₱1,025,081.82 award stated in the Decision of the Labor Arbiter – because it was allegedly what respondents could afford, given the business losses they had suffered at that time. Upon the denial by the NLRC of this Motion, respondents promptly complied with its directive to post the differential in the amount of ₱122,801.66, which had been computed without including the award of moral and exemplary damages and attorney's fees. Following the pronouncement in *Pasig Cylinder*, the CA was correct in holding that the appeal was timely filed on account of respondents' substantial compliance with the requirement under Article 223.

2. ID.; TERMINATION OF EMPLOYMENT; DISMISSAL OF RANK-AND-FILE PERSONNEL AND MANAGERIAL EMPLOYEES BY THE EMPLOYER BASED ON BREACH OF TRUST, DISTINGUISHED.— In instances in which the termination of employment by the employer is based on breach of trust, a distinction must be made between rank-and-file employees and managerial employees, thus: x x x [W]ith respect to rank-and- file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. **But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation**

therein renders him unworthy of the trust and confidence demanded by his position.

3. ID.; ID.; PROCEDURAL REQUIREMENTS IN THE TERMINATION OF EMPLOYMENT.— [I]n the case of termination by the employer, it is not enough that there exists a just cause therefor, as procedural due process dictates compliance with the two-notice rule in effecting a dismissal: (a) the employer must inform the employee of the specific acts or omissions for which the dismissal is sought, and (b) the employer must inform the employee of the decision to terminate employment after affording the latter the opportunity to be heard. On the other hand, if the termination of employment is by the employee, the resignation must show the concurrence of the intent to relinquish and the overt act of relinquishment[.]

4. ID.; ID.; JUST CAUSE FOR DISMISSAL OF A MANAGERIAL EMPLOYEE, PRESENT.— [T]he NLRC and the CA were in agreement that although Mendoza committed acts that amounted to breach of trust, the termination of her employment was not on that basis. Instead, both tribunals held that the parties parted amicably, with Mendoza evincing her voluntary intention to resign and respondents' proposed settlement to pay her separation benefits. This Court does not agree with these findings in their entirety. Whether Mendoza was a Chief Accountant of HMS Credit, as stated in her appointment letter, or a Finance Officer of all the corporations under the HMS Group, as claimed by respondents, what is certain is that she was a managerial employee. In securing this position, she fraudulently misrepresented her professional qualifications by stating in her Personal Information Sheet that she was a CPA. Based on the records, she never controverted this imputation of dishonesty or, at the very least, provided any explanation therefor. Thus, this deceitful action alone was sufficient basis for respondents' loss of confidence in her as a managerial employee.

5. ID.; ID.; WHEN DISMISSAL OF A MANAGERIAL EMPLOYEE WAS EFFECTED WITHOUT COMPLYING THE TWO-NOTICE REQUIREMENT; VOLUNTARY RESIGNATION, NOT PROVEN.— [D]espite the existence of a just cause for termination, Mendoza was nevertheless dismissed from service in violation of procedural due process, as respondents failed to observe the two-notice requirement. Instead, respondents

insisted that she voluntarily resigned, which argument the NLRC and the CA sustained. This Court is not persuaded. Respondents were unable to discharge their burden to prove the contemporaneous existence of an intention on the part of Mendoza to resign and an overt act of resignation. Aside from their self-serving allegation that she had offered to resign after they had expressed their loss of trust in her, there is nothing in the records to show that she voluntarily resigned from her position in their company. In this regard, it is worthy to underscore the established rule that the filing of a complaint for illegal dismissal is inconsistent with resignation or abandonment. Moreover, the conclusion of the NLRC and the CA that Mendoza voluntarily resigned in consideration of respondents' supposed payment of a settlement is bereft of any basis. The lower tribunals merely surmised that the parties forged a compromise agreement despite respondents' own admission that they never decided thereon. In fact, the records are clear that none of the parties claimed the existence of any settlement in exchange for her resignation.

6. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURAL DUE PROCESS SHOULD NOT RENDER THE DISMISSAL ILLEGAL; EMPLOYEE IS ENTITLED ONLY TO NOMINAL DAMAGES.— [I]t is evident that although there was a just cause for terminating the services of Mendoza, respondents were amiss in complying with the two-notice requirement. Following the prevailing jurisprudence on the matter, if the dismissal is based on a just cause, then the non-compliance with procedural due process should not render the termination from employment illegal or ineffectual. Instead, the employer must indemnify the employee in the form of nominal damages. Therefore, the dismissal of Mendoza should be upheld, and respondents cannot be held liable for the payment of either backwages or separation pay. Considering all the circumstances surrounding this case, this Courts finds the award of nominal damages in the amount of ₱30,000 to be in order.

APPEARANCES OF COUNSEL

Grapilon Chan & Pasana Law Offices for petitioner.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision dated 14 November 2008[1] issued by the Court of Appeals (CA) in CA G.R. SP No. 82653.

Petitioner Zenaida D. Mendoza (Mendoza) was the Chief Accountant of respondent HMS Credit Corporation (HMS Credit) beginning 1 August 1999.[2] During her employment, she simultaneously serviced three other respondent companies, all part of the Honda Motor Sports Group (HMS Group),[3] namely, Honda Motor Sports Corporation (Honda Motors), Beta Motor Trading Incorporated (Beta Motor) and Jianshe Cycle World (Jianshe).[4] Respondent Luisa B. Diego (Luisa) was the Managing Director of HMS Credit, while respondent Felipe R. Diego (Felipe) was the company officer to whom Mendoza directly reported.[5]

Mendoza avers that on 11 April 2002, after she submitted to Luisa the audited financial statements of Honda Motors, Beta Motor, and Jianshe, Felipe summoned Mendoza to advise her of her termination from service.[6] She claims that she was even told to leave the premises without being given the opportunity to collect her personal belongings.[7]

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[1] *Rollo*, pp. 19-27. Penned by CA Associate Justice Rosmari D. Carandang and concurred in by Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Mariflor P. Punzalan Castillo.

[2] *Id.* at 5, Petition; *Id.* at 88 and 129, Letter dated 19 August 1999.

[3] CA *rollo*, p. 358, Memorandum [of Respondents] dated 3 September 2008.

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

[5] *Id.* at 88, Letter dated 19 August 1999 of Luisa to Mendoza. Note that in the Reply to: Respondents' Position Paper dated 12 August 2002, Mendoza indicated that Felipe was the President of Beta Motor. CA *rollo*, pp. 57-58.

[6] *Id.* at 5, Petition.

[7] *Id.*

Mendoza also contends that when she went back to the office building on 13 April 2012, the stationed security guard stopped her and notified her of the instruction of Felipe and Luisa to prohibit her from entering the premises.[8] Later that month, she returned to the office to pick up her personal mail and to settle her food bills at the canteen, but the guard on duty told her that respondents had issued a memorandum barring her from entering the building.[9]

On the other hand, respondents maintain that Mendoza was hired on the basis of her qualification as a Certified Public Accountant (CPA),[10] which turned out to be a misrepresentation.[11] They likewise contend that not only did she fail to disclose knowledge of the resignations of two HMS Group officers, Art Labasan (Labasan) and Jojit de la Cruz (de la Cruz), and their subsequent transfer to a competitor company, but she also had a hand in pirating them. Thus, on 12 April 2002, they supposedly confronted her about these matters. In turn, she allegedly told them that if they had lost their trust in her, it would be best for them to part ways.[12] Accordingly, they purportedly asked her to propose an amount representing her entitlement to separation benefits. Before she left that night, they allegedly handed her ₱30,000 as payment for the external auditor she had contracted to examine the books of the HMS Group.[13]

On 30 April 2002, Mendoza filed with the National Labor Relations Commission (NLRC) a Complaint for Illegal Dismissal and Non-payment of Salaries/Wages, 13th Month Pay and Mid-

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[8] *Id.* at 7.

[9] *Id.*

[10] CA *Rollo*, p. 55, Personal Information Sheet of Mendoza.

[11] *Rollo*, p. 255, Memorandum [of Respondents] dated 21 December 2009.

[12] *Id.* at 258.

[13] *Id.* at 259.

Year Bonus.[14] The case was docketed as NLRC-NCR North Sector Case No. 00-04-02576-2002.[15]

On 28 January 2003, the Labor Arbiter rendered a Decision ruling that Mendoza had been illegally dismissed, and that the dismissal had been effected in violation of due process requirements.[16] Thus, the Labor Arbiter held respondents jointly and severally liable for the payment of separation pay, backwages, moral and exemplary damages, and attorney's fees in the total amount of ₱1,025,081.82.[17]

Respondents filed an Appeal dated 14 March 2003[18] and a Motion to Reduce Appeal Bond dated 21 March 2003 with the National Labor Relations Commission (NLRC), tendering the amount of only ₱650,000 on the ground of purported business losses.[19] In its Order dated 30 May 2003, the NLRC denied the request for the reduction of the appeal bond, and directed respondents to put up the additional amount of ₱122,801.66 representing the differential between the judgment award – not including the moral and exemplary damages and attorney's fees – and the sum previously tendered by them.[20] Respondents complied with the Order.[21]

On 30 September 2008, the NLRC rendered a Decision reversing the ruling of the Labor Arbiter.[22] In declaring that Mendoza had not been summarily dismissed, the NLRC held

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[14] *Id.* at 89.

[15] *Id.*

[16] *Id.* at 68-87.

[17] *Id.*

[18] *Id.* at 131-141.

[19] *Id.* at 142-143.

[20] *Id.* at 157-159; CA *rollo*, pp. 123-126.

[21] *Rollo*, p. 21, CA Decision. Note, however, that in their Motion to Reduce Bond dated 25 May 2004, respondents alleged that they had posted a Supersedeas Bond in the amount of ₱1,025,081.82. CA *rollo*, pp. 318-320.

[22] *Id.* at 56-66.

as follows: (a) her claim that she was terminated was incompatible with respondents' act of entrusting the amount of ₱30,000 to her as payment for the external auditor; (b) the same act demonstrated that the parties parted amicably, and that she had the intention to resign; and (c) her admission that respondents allowed her to take a leave of absence subsequent to their confrontation also belied her claim that she was dismissed.[23] Further, it also ruled that her misrepresentation as to her qualifications, her concealment of her meeting with a rival motorcycle dealership, and her non-disclosure of her meeting with the officers and mechanics of HMS Group amounted to a breach of trust, which constituted a just cause for termination, especially of managerial employees like her.[24] Nevertheless, it ordered respondents to pay her separation pay equivalent to one month for every year of service.[25]

The NLRC denied the Motion for Reconsideration filed by Mendoza,[26] prompting her to file a Petition for *Certiorari* with the CA, which rendered a Decision affirming that of the lower tribunal.[27] The CA ruled that that there was no dismissal, as the parties had entered into a compromise agreement whereby respondents offered to pay Mendoza separation benefits in exchange for her voluntary resignation.[28] It further explained:

> On the merits, this case involves neither dismissal on the part of the employer nor abandonment on the part of the employee. On the evening of April 11, 2002, respondents and petitioner had already agreed on an amicable settlement with petitioner voluntarily resigning her employment and respondents paying her separation benefits. This is evident from the amiable manner with which the parties ended their meeting, with respondents entrusting to petitioner the ₱30,000.00 payment for the external auditor and the petitioner considering her

[23] *Id.* at 63.

[24] *Id.* at 62, 64-65.

[25] *Id.* at 66.

[26] CA *Rollo*, pp. 26-27, NLRC Resolution dated 28 November 2003.

[27] *Rollo*, pp. 19-27, CA Decision dated 14 November 2003.

[28] *Id.* at 26.

absence the following day as a previously approved leave from work. It appears, however, that respondents had a sudden change of heart while petitioner was away on leave on April 12, 2002 because when the latter returned on April 13, 2002 she was already prevented from entering the office premises per strict instructions from respondents. Clearly, this was an attempt on the part of respondents to effectively renege on its commitment to pay separation benefits to petitioner.

While, generally, an employee who voluntarily resigns from employment is not entitled to separation pay, an arrangement whereby the employee would receive separation pay despite having resigned voluntarily constitutes a contract which is freely entered into and which must be performed in good faith. Thus, the NLRC correctly sustained the prior commitment of respondents to pay separation benefits to petitioner. For although loss of trust and confidence could have been a valid ground available to respondents, they did not institute the appropriate dismissal procedures against petitioner. Instead, they opted to enter into a compromise agreement with an offer to pay separation benefits in exchange for the latter's voluntary resignation. It is an accepted practice for parties to adjust their difficulties by mutual consent and, through the execution of a compromise agreement, prevent or to put an end to a lawsuit. And, since there was no dismissal, valid or otherwise, involved in this case, the non-observance of the notice requirements is of no relevance.[29]

Mendoza consequently filed the present Petition for Review, raising the following grounds:

a. The CA erred in concluding that respondents had timely filed their appeal with the NLRC.

b. The CA erred in ruling that there was no illegal dismissal.[30]

Thus, in disposing of the instant case, the following issues must be discussed: (a) whether the appeal of respondents to the NLRC was timely filed, and (b) whether Mendoza was illegally dismissed.

First issue: Timely filing of the appeal before the NLRC

[29] *Id.* at 25-26.

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

The relevant portion of Article 223 of the Labor Code on appeals of decisions, awards or orders of the Labor Arbiter as follows:

> Art. 223. x x x 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.

In *Pasig Cylinder v. Rollo*,[31] this Court explained that the required posting of a bond equivalent to the monetary award in the appealed judgment may be liberally interpreted as follows:

> x x x. True, Article 223 of the Labor Code requires the filing of appeal bond "in the amount equivalent to the monetary award in the judgment appealed from." However, both the Labor Code and this Court's jurisprudence abhor rigid application of procedural rules at the expense of delivering just settlement of labor cases. Petitioners' reasons for their filing of the reduced appeal bond — the downscaling of their operations coupled with the amount of the monetary award appealed — are not unreasonable. Thus, the recourse petitioners adopted constitutes substantial compliance with Article 223 consistent with our ruling in *Rosewood Processing, Inc. v. NLRC*, where we allowed the appellant to file a reduced bond of ₱50,000 (accompanied by the corresponding motion) in its appeal of an arbiter's ruling in an illegal termination case awarding ₱789,154.39 to the private respondents.[32]

In the case at bar, respondents filed a Motion to Reduce Appeal Bond, tendering the sum of ₱650,000 – instead of the ₱1,025,081.82 award stated in the Decision of the Labor Arbiter – because it was allegedly what respondents could afford, given the business losses they had suffered at that time.[33] Upon the denial by the NLRC of this Motion, respondents promptly complied with its directive to post the differential in the amount of ₱122,801.66, which had been computed without including

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[31] G.R. No. 173631, 8 September 2010, 630 SCRA 320.

[32] *Id.* at 329-330.

[33] *Rollo*, p. 142.

the award of moral and exemplary damages and attorney's fees.[34] Following the pronouncement in *Pasig Cylinder*, the CA was correct in holding that the appeal was timely filed on account of respondents' substantial compliance with the requirement under Article 223.

Second issue: Illegal dismissal of Mendoza

The Labor Code provides for instances when employment may be legally terminated by either the employer or the employee, to wit:

> Art. 282. Termination by employer. An employer may terminate an employment for any of the following causes:
>
> a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
>
> b. Gross and habitual neglect by the employee of his duties;
>
> c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
>
> d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> e. Other causes analogous to the foregoing.
>
> xxx xxx xxx
>
> Art. 285. Termination by employee.
>
> a. An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.
>
> b. An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:

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[34] *Id.* at p. 21, CA Decision.

1. Serious insult by the employer or his representative on the honor and person of the employee;
2. Inhuman and unbearable treatment accorded the employee by the employer or his representative;
3. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and
4. Other causes analogous to any of the foregoing.

In instances in which the termination of employment by the employer is based on breach of trust, a distinction must be made between rank-and-file employees and managerial employees, thus:

> The degree of proof required in labor cases is not as stringent as in other types of cases. It must be noted, however, that recent decisions of this Court have distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. **But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position**.[35] (Emphasis supplied)

Further, in the case of termination by the employer, it is not enough that there exists a just cause therefor, as procedural due process dictates compliance with the two-notice rule in effecting a dismissal: (a) the employer must inform the employee

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[35] *Etcuban v. Sulpicio Lines*, 489 SCRA 483, 496-497.

of the specific acts or omissions for which the dismissal is sought, and (b) the employer must inform the employee of the decision to terminate employment after affording the latter the opportunity to be heard.[36]

On the other hand, if the termination of employment is by the employee, the resignation must show the concurrence of the intent to relinquish and the overt act of relinquishment, as held in *San Miguel Properties v. Gucaban*:[37]

> Resignation — the formal pronouncement or relinquishment of a position or office — is the voluntary act of an employee who is in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and he has then no other choice but to disassociate himself from employment. **The intent to relinquish must concur with the overt act of relinquishment**; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he in fact intended to terminate his employment. **In illegal dismissal cases, fundamental is the rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned**.[38] (Emphases supplied)

In this case, the NLRC and the CA were in agreement that although Mendoza committed acts that amounted to breach of trust, the termination of her employment was not on that basis.[39] Instead, both tribunals held that the parties parted amicably, with Mendoza evincing her voluntary intention to resign and respondents' proposed settlement to pay her separation benefits.[40] This Court does not agree with these findings in their entirety.

Whether Mendoza was a Chief Accountant of HMS Credit, as stated in her appointment letter,[41] or a Finance Officer of

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[36] *Mansion Printing Center v. Bitara*, G.R. No. 168120, 25 January 2012.

[37] G.R. No. 153982, 18 July 2011, 654 SCRA 18.

[38] *Id.* at 28-29.

[39] *Rollo*, pp. 62-63, NLRC Decision; *rollo*, p. 26, CA Decision.

[40] *Id.* at 63, 65, NLRC Decision; *id.* at 25, CA Decision.

[41] *Id.* at 88, Letter dated 19 August 1999.

all the corporations under the HMS Group, as claimed by respondents,[42] what is certain is that she was a managerial employee. In securing this position, she fraudulently misrepresented her professional qualifications by stating in her Personal Information Sheet that she was a CPA. Based on the records, she never controverted this imputation of dishonesty or, at the very least, provided any explanation therefor. Thus, this deceitful action alone was sufficient basis for respondents' loss of confidence in her as a managerial employee.

In addition, this Court finds no reason to deviate from the factual findings of the NLRC and the CA as regards the existence of other circumstances that demonstrated Mendoza's breach of trust. The NLRC held in this wise:

> In sum, the commission finds that [Mendoza] was not illegally dismissed. [Respondents] could have validly dismissed [her] for just cause because she had forfeited her employment by having incurred breach of trust that they had reposed in her. [She] had concealed from [them] the fact that she was going to visit a rival motorcycle dealership in Tarlac, called Honda Mar, on the afternoon of April 5, 2002, in the company of its owner; the notice she had given was that, on the morning of that date, she would get her child's report card from her school. She also failed to disclose to them the fact that she saw in that store Labasan and De la Cruz, and [respondents'] mechanics, Gatus and Mejis, who cleaned and painted the same. And she gave the appearance of giving aid and support to [respondents'] competitor, to the prejudice of [their] business standing and goodwill. These were acts of disloyalty for which [they] would have been justified in terminating [her] service on the ground of loss of confidence.[43]

However, despite the existence of a just cause for termination, Mendoza was nevertheless dismissed from service in violation of procedural due process, as respondents failed to observe the two-notice requirement. Instead, respondents insisted that she voluntarily resigned, which argument the NLRC and the CA sustained. This Court is not persuaded.

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[42] *Id.* at 57, NLRC Decision dated 30 September 2003.

[43] *Id.* at 64.

Respondents were unable to discharge their burden to prove the contemporaneous existence of an intention on the part of Mendoza to resign and an overt act of resignation. Aside from their self-serving allegation that she had offered to resign after they had expressed their loss of trust in her, there is nothing in the records to show that she voluntarily resigned from her position in their company. In this regard, it is worthy to underscore the established rule that the filing of a complaint for illegal dismissal is inconsistent with resignation or abandonment.[44]

Moreover, the conclusion of the NLRC and the CA that Mendoza voluntarily resigned in consideration of respondents' supposed payment of a settlement is bereft of any basis. The lower tribunals merely surmised that the parties forged a compromise agreement despite respondents' own admission that they never decided thereon.[45] In fact, the records are clear that none of the parties claimed the existence of any settlement in exchange for her resignation.

From the foregoing discussion, it is evident that although there was a just cause for terminating the services of Mendoza, respondents were amiss in complying with the two-notice requirement. Following the prevailing jurisprudence on the matter, if the dismissal is based on a just cause, then the non-compliance with procedural due process should not render the termination from employment illegal or ineffectual.[46] Instead, the employer must indemnify the employee in the form of nominal damages.[47] Therefore, the dismissal of Mendoza should be upheld, and respondents cannot be held liable for the payment of either backwages or separation pay. Considering all the circumstances surrounding this case, this Courts finds the award of nominal damages in the amount of ₱30,000[48] to be in order.

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[44] *Nationwide Security and Allied Services v. Valderama*, G.R. No. 186614, 23 February 2011, 644 SCRA 299, 307.

[45] CA *rollo*, p. 140, Motion for Partial Reconsideration dated 28 October 2003.

[46] *Agabon v. NLRC*, 485 Phil. 248, 287-288.

[47] *Id.*

[48] *De Jesus v. Aquino*, G.R. No. 164662, 18 February 2013.

WHEREFORE, the Petition for Review is **DENIED.** The Decision dated 14 November 2008 of the CA in CA G.R. SP No. 82653 is **AFFIRMED WITH MODIFICATION**: the award of separation pay is deleted and in lieu thereof, nominal damages in the amount of ₱30,000 is awarded in favor of petitioner.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 187677. April 17, 2013]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), *petitioner, vs.* **HON. ROSA SAMSON-TATAD, as Presiding Judge of the Regional Trial Court, Branch 105, Quezon City, and SPOUSES WILLIAM AND REBECCA GENATO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; NATURE.— Proceeding from the principle of *jus regalia*, the right to eminent domain has always been considered as a fundamental state power that is inseparable from sovereignty. It is described as the State's inherent power that need not be granted even by the Constitution, and as the government's right to appropriate, in the nature of compulsory sale to the State, private property for public use or purpose. Expropriation, or the exercise of the State's right to eminent domain, is proscribed by the restraints of public use and just compensation. It is governed by Rule 67 of the Rules of Court, which presents

procedural guidelines for the court to ensure that due process is observed and just compensation rightly paid to the private owners.

2. ID.; ID.; ID.; THE ISSUE OF OWNERSHIP OF THE LAND SOUGHT TO BE EXPROPRIATED MAY BE RESOLVED IN AN EXPROPRIATION CASE ONLY FOR THE SOLE PURPOSE OF DETERMINING WHO IS ENTITLED TO JUST COMPENSATION.— [T]his Court first had the occasion to interpret Section 9, Rule 67 in the case of *Republic*. In addressing the issue of "whether or not the court that hears the expropriation case has also jurisdiction to determine, in the same proceeding, the issue of ownership of the land sought to be condemned," the Court answered in the affirmative[.] x x x However, the authority to resolve ownership should be taken in the proper context. The discussion in *Republic* was anchored on the question of who among the respondents claiming ownership of the property must be indemnified by the Government[.] x x x Thus, such findings of ownership in an expropriation proceeding should not be construed as final and binding on the parties. By filing an action for expropriation, the condemnor (petitioner), merely serves notice that it is taking title to and possession of the property, and that the defendant is asserting title to or interest in the property, not to prove a right to possession, but to prove a right to compensation for the taking. If at all, this situation is akin to ejectment cases in which a court is temporarily authorized to determine ownership, if only to determine who is entitled to possession. This is not conclusive, and it remains open to challenge through proper actions. The consequences of Sec. 9, Rule 67 cannot be avoided, as they are due to the intimate relationship of the issue of ownership with the claim for the expropriation payment.

3. ID.; ID.; ID.; PRESENTATION OF AN EVIDENCE OF OWNERSHIP OF THE LAND IN AN EXPROPRIATION CASE DOES NOT CONSTITUTE COLLATERAL ATTACK ON THE TITLE; SECTION 48 OF P.D. 1529, NOT APPLICABLE.— [O]ur interpretation of Sec. 9, Rule 67 does not run counter to Section 48 of P.D. 1529. Under Sec. 48, collateral attacks on a Torrens title are prohibited. x x x In several instances, we have considered an Answer praying for the cancellation of the plaintiff's Torrens title as a form of a collateral attack. We have afforded the similar treatment in a petition questioning the

validity of a deed of sale for a registered land, and in a reformation of a deed of sale to include areas registered under the name of another party. But a resolution on the issue of ownership in a partition case was deemed neither to be a direct or collateral attack, for "until and unless this issue of co-ownership is definitely and finally resolved, it would be premature to effect a partition of the disputed properties." Here, the attempt of petitioner to present evidence cannot be characterized as an "attack." It must be emphasized that the objective of the case is to appropriate private property, and the contest on private respondents' title arose only as an incident to the issue of whom should be rightly compensated.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Wenceslao L. Orpiano & Vicente D. Millora and *Evelina R. Tamayo-Volante* for respondents.

D E C I S I O N

SERENO, *C.J.*:

This is an appeal via a Petition for Review on *Certiorari*[1] dated 19 June 2009 assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in C.A. G.R. SP No. 93227 which affirmed the Orders[4] of the Regional Trial Court (RTC), Branch 105, Quezon City in Civil Case No. Q-01-44595.The RTC barred petitioner from presenting evidence to prove its claim of ownership over the subject property, as the presentation thereof would constitute a collateral attack on private respondents' title.

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[1] *Rollo,* pp. 34-76.

[2] *Id.* at 22-32; CA Decision dated 29 September 2008, penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Regalado Maambong and Marlene Gonzales-Sison.

[3] *Id.* at 8-10, CA Resolution dated 27 April 2009, penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Jose C. Mendoza (now a member of this Court) and Marlene Gonzales-Sison.

[4] *Id.* at 115-118, 125-126; RTC Orders dated 12 July 2005 and 17 November 2005, penned by Presiding Judge Rosa Samson-Tatad.

The antecedent facts are as follows:

On 13 July 2001, petitioner Republic of the Philippines, represented by the Department of Public Works and Highways (DPWH), filed a Complaint against several defendants, including private respondents, for the expropriation of several parcels of land affected by the construction of the EDSA-Quezon Avenue Flyover.[5] Private respondents, Spouses William and Rebecca Genato, are the registered owners of a piece of land ("subject property") covered by Transfer Certificate of Title (TCT) No. RT-11603 (383648)[6] and having an area of 460 square meters.

During the pendency of the proceedings, petitioner received a letter dated 14 June 2002 from Engr. Patrick B. Gatan, Project Manager IV of the DPWH-NCR, reporting that the subject property was "government land and that the transfer certificate of title of the said claimant [respondent] x x x is of dubious origin and of fabrication as it encroached or overlapped on a government property."[7] As a result, petitioner filed an Amended Complaint on 24 June 2002,[8] seeking to limit the coverage of the proceedings to an area conforming to the findings of the DPWH:

> 4. To accomplish said project, which is to be undertaken by the Department of Public Works and Highways [DPWH], it is necessary and urgent for plaintiff to acquire in fee simple portions of the following parcels of land belonging to, occupied, possessed, and/or the ownership of which are being claimed by the defendants, to wit:
>
> x x x x x x x x x
>
> [c] Defendants William O. Genato and Rebecca G. Genato. –
>
> x x x x x x x x x

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[5] *Id.* at 77-82.

[6] *Id.* at 183-184.

[7] *Id.* at 83.

[8] *Id.* At 48-49, cited in the Petition for Review.

5. The portion of the above properties that are affected by the project and shaded green in the sketch plan hereto attached and made integral part hereof as Annex E, consisting of an area of: x x x [c] 460 square meters of the aforedescribed property registered in the name of defendants spouses William and Rebecca Genato; x x x. (Emphasis in the original)

On 18 July 2002, petitioner filed a Manifestation and Motion[9] to have the subject property "declared or considered of uncertain ownership or subject to conflicting claims."

In an Order dated 10 December 2002,[10] the RTC admitted petitioner's Amended Complaint, deferred the release to respondents the amount of eighteen million four hundred thousand pesos (₱18,400,000) deposited in the bank, equivalent to the current zonal valuation of the land, and declared the property as the subject of conflicting claims.

While petitioner was presenting evidence to show that the subject property actually belonged to the Government, private respondents interposed objections saying that petitioner was barred from presenting the evidence, as it constituted a collateral attack on the validity of their TCT No. RT-11603 (383648). The RTC then required the parties to submit their respective Memoranda.

Upon receipt of the Memoranda, the trial court issued on 12 July 2005 an Order[11] as follows:

WHEFEFORE, premises considered, the Court finds that the issue of the validity of the TCT No. 11603 (383648) can only be raised in an action expressly instituted for that purpose and not in this instant proceeding. Accordingly, plaintiff is barred from presenting evidence as they [sic] constitute collateral attack on the validity of the title to the subject lot in violation of Sec. 48 of P. D. 1529.

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[9] *Id.* at 85-88.

[10] *Id.* at 91-96.

[11] *Id.* at 115-118.

On 4 August 2005, petitioner seasonably filed a Motion for Reconsideration,[12] but the motion was denied by the RTC in an Order dated 17 November 2005.[13]

On 4 January 2006, private respondents filed a Motion for the payment of just compensation amounting to twenty million seven hundred thousand pesos (₱20,700,000) and for the release of eighteen million four hundred thousand pesos (₱18,400,000) deposited in the Land Bank–South Harbor Branch as partial payment.[14] This Motion remains pending in the RTC to date.

On 9 February 2006, petitioner filed with the CA a Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.[15]

The appellate court ruled that since the subject property was covered by a Torrens title, Presidential Decree No. 1529, or the Property Registration Decree (P. D. 1529), necessarily finds significance. Thus, it held that the RTC rightly applied Sec. 48. Accordingly, the CA issued its 29 September 2008 Decision,[16] the dispositive portion of which reads:

WHEREFORE, the Petition for *Certiorari* is **DISMISSED.** The prayer for the issuance of a Writ of Preliminary Injunction is accordingly **DENIED.**

On 29 October 2008, petitioner filed a Motion for Reconsideration,[17] but the motion was also denied in a Resolution dated 27 April 2009.[18]

Hence, the instant Petition.

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[12] *Id.* at 120-124.

[13] *Id.* at 125-126.

[14] *Id.* at 128-130.

[15] *Id.* at 132-162.

[16] *Id.* at 163-172.

[17] *Id.* at 174-180.

[18] *Id.* at 187-189.

A Comment[19] on the Petition was filed by private respondents on 1 September 2009, and a Reply[20] thereto by petitioner on 27 January 2010.

ISSUE

From the foregoing, the sole issue submitted for resolution before this Court is whether petitioner may be barred from presenting evidence to assail the validity of respondents' title under TCT No. RT-11603 (383648).

THE COURT'S RULING

Petitioner argues that under Section 9, Rule 67 of the Rules of Court, if the ownership of a property to be expropriated is uncertain, the court in the **same** expropriation proceeding is also given authority to make a proper adjudication of the matter. Section 9 of Rule 67 reads:

> SECTION 9. *Uncertain Ownership. Conflicting Claims.* — If the ownership of the property taken is uncertain, or there are conflicting claims to any part thereof, the court may order any sum or sums awarded as compensation for the property to be paid to the clerk of the court for the benefit of the persons adjudged in the same proceeding to be entitled thereto. But the judgment shall require the payment of the sum or sums awarded to either the defendant or the clerk before the plaintiff can enter upon the property, or retain it for the public use or purpose if entry has already been made.

This view is allegedly supported by *Republic v. Court of First Instance of Pampanga, presided formerly by Judge L. Pasicolan*[21] *(Republic)* in which the trial court hearing the expropriation proceeding was also allowed to resolve the issue of ownership.

Petitioner further argues that the original Complaint was amended "precisely to reflect the fact that herein private

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[19] *Id.* at 198-213.

[20] *Id.* at 240-255.

[21] *Id.* at 242-245; Reply dated 26 January 2010; 144 Phil. 643; 648-650 (1970).

respondents, albeit ostensibly appearing as registered owners, are to be considered as mere claimants of one of the properties subject of the expropriation." This is the reason why the RTC issued an Order declaring the property subject of conflicting claims.

Moreover, this being an *in rem* proceeding, "plaintiff Republic of the Philippines seeks the relief, both in the original and amended complaints, to transfer to plaintiff the titles to said parcels of land together with their improvements free from all liens and encumbrances. For this particular purpose, the expropriation suit is essentially a direct proceeding."[22]

Private respondents, on the other hand, invoke Section 48 of P. D. 1529, *viz*:

> SECTION 48. *Certificate Not Subject to Collateral Attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

It is their contention that by allowing petitioner to present adversarial evidence, the court is in effect allowing respondents' Torrens title to be collaterally attacked – an action prohibited by P. D. 1529.

We rule that petitioner may be allowed to present evidence to assert its ownership over the subject property, but for the sole purpose of determining who is entitled to just compensation.

I
Proper interpretation of Section 9, Rule 67

Proceeding from the principle of *jus regalia*, the right to eminent domain has always been considered as a fundamental state power that is inseparable from sovereignty.[23] It is described as the State's inherent power that need not be granted even

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[22] *Id.* at 65; Petition for Review on *Certiorari* dated 19 June 2009.

[23] *Moday v. Court of Appeals,* 335 Phil. 1057, 1062 (1997); *Visayan Refining Co. v. Camus,* 40 Phil. 550, 559 (1919).

by the Constitution,[24] and as the government's right to appropriate, in the nature of compulsory sale to the State, private property for public use or purpose.[25]

Expropriation, or the exercise of the State's right to eminent domain, is proscribed by the restraints of public use and just compensation.[26] It is governed by Rule 67 of the Rules of Court, which presents procedural guidelines for the court to ensure that due process is observed and just compensation rightly paid to the private owners.

Indeed, this Court first had the occasion to interpret Section 9, Rule 67 in the case of *Republic.* In addressing the issue of "whether or not the court that hears the expropriation case has also jurisdiction to determine, in the same proceeding, the issue of ownership of the land sought to be condemned," the Court answered in the affirmative:

> The sole issue in this case, *i.e.*, whether or not the court that hears the expropriation case has also jurisdiction to determine, in the same proceeding, the issue of ownership of the land sought to be condemned, must be resolved in the affirmative. That the court is empowered to entertain the conflicting claims of ownership of the condemned or sought to be condemned property and adjudge the rightful owner thereof, in the same expropriation case, is evident from Section 9 of the Revised Rule 69, which provides:
>
> > SEC. 9. *Uncertain ownership. Conflicting claims.* — If the ownership of the property taken is uncertain, or there are conflicting claims to any part thereof, the court may order any sum or sums awarded as compensation for the property to be paid to the clerk of court for the benefit of *the persons adjudged in the same proceeding to be entitled thereto*. But the judgment shall require the payment of the sum or sums awarded to either the defendant or the clerk before the plaintiff can enter upon the property, or retain it for the public use or purpose if entry has already been made.

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[24] *Republic v. Tagle,* 359 Phil. 892, 903 (1998).

[25] *Moday v. Court of Appeals, supra.*

[26] *Reyes v. National Housing Authority,* 443 Phil. 603, 610 (2003).

In fact, the existence of doubt or obscurity in the title of the person or persons claiming ownership of the properties to be expropriated would not preclude the commencement of the action nor prevent the court from assuming jurisdiction thereof. The Rules merely require, in such eventuality, that the entity exercising the right of eminent domain should state in the complaint that the true ownership of the property cannot be ascertained or specified with accuracy.[27]

We arrived at the same conclusion in *Republic v. Rural Bank of Kabacan, Inc.*,[28] in which we held thus:

The trial court should have been guided by Rule 67, Section 9 of the 1997 Rules of Court, which provides thus:

> SEC. 9. *Uncertain ownership; conflicting claims.* — If the ownership of the property taken is uncertain, or there are conflicting claims to any part thereof, the court may order any sum or sums awarded as compensation for the property to be paid to the court for the benefit of the person adjudged in the same proceeding to be entitled thereto. But the judgment shall require the payment of the sum or sums awarded to either the defendant or the court before the plaintiff can enter upon the property, or retain it for the public use or purpose if entry has already been made.

Hence, the appellate court erred in affirming the trial court's Order to award payment of just compensation to the defendants-intervenors. There is doubt as to the real owner of Lot No. 3080. Despite the fact that the lot was covered by TCT No. T-61963 and was registered under its name, the Rural Bank of Kabacan manifested that the owner of the lot was no longer the bank, but the defendants-intervenors; however, it presented no proof as to the conveyance thereof. **In this regard, we deem it proper to remand this case to the trial court for the reception of evidence to establish the present owner of Lot No. 3080 who will be entitled to receive the payment of just compensation.** (Emphases supplied)

However, the authority to resolve ownership should be taken in the proper context. The discussion in *Republic* was anchored on the question of who among the respondents claiming ownership of the property must be indemnified by the Government:

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[27] *Supra* note 21, at 649.

[28] G. R. No. 185124, 25 January 2012, 664 SCRA 233, 251-252.

Now, to determine the person who is to be indemnified for the expropriation of Lot 6, Block 6, Psd-2017, the court taking cognizance of the expropriation must necessarily determine if the sale to the Punzalan spouses by Antonio Feliciano is valid or not. For if valid, said spouses must be the ones to be paid by the condemnor; but if invalid, the money will be paid to someone else. x x x.[29]

Thus, such findings of ownership in an expropriation proceeding should not be construed as final and binding on the parties. By filing an action for expropriation, the condemnor (petitioner), merely serves notice that it is taking title to and possession of the property, and that the defendant is asserting title to or interest in the property, not to prove a right to possession, but to prove a right to compensation for the taking.[30]

If at all, this situation is akin to ejectment cases in which a court is temporarily authorized to determine ownership, if only to determine who is entitled to possession. This is not conclusive, and it remains open to challenge through proper actions.[31] The consequences of Sec. 9, Rule 67 cannot be avoided, as they are due to the intimate relationship of the issue of ownership with the claim for the expropriation payment.[32]

II
Inapplicability of Section 48, P. D. 1529

Verily, our interpretation of Sec. 9, Rule 67 does not run counter to Section 48 of P.D. 1529. Under Sec. 48, collateral attacks on a Torrens title are prohibited. We have explained the concept in *Oño v. Lim*,[33] to wit:

An action or proceeding is deemed an attack on a title when its objective is to nullify the title, thereby challenging the judgment

[29] *Id.*

[30] *Republic v. Court of Appeals and Heirs of Luis Santos,* 433 Phil. 106, 118-119 (2002).

[31] *Refugia v. Court of Appeals*, 327 Phil. 982, 1006 (1996); *Sps. Padilla v. Velasco*, G.R. No. 169956, 19 January 2009, 576 SCRA 219, 229.

[32] *Heirs of Mario Pacres v. Heirs of Cecilia Ygoña,* G.R. No. 174719, 5 May 2010, 620 SCRA 213, 230-231.

[33] G.R. No. 154270, 9 March 2010, 614 SCRA 514, 521.

pursuant to which the title was decreed. The attack is direct when the objective is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof.

In several instances, we have considered an Answer praying for the cancellation of the plaintiff's Torrens title as a form of a collateral attack.[34] We have afforded the similar treatment in a petition questioning the validity of a deed of sale for a registered land,[35] and in a reformation of a deed of sale to include areas registered under the name of another party.[36] But a resolution on the issue of ownership in a partition case was deemed neither to be a direct or collateral attack, for "until and unless this issue of co-ownership is definitely and finally resolved, it would be premature to effect a partition of the disputed properties."[37]

Here, the attempt of petitioner to present evidence cannot be characterized as an "attack." It must be emphasized that the objective of the case is to appropriate private property, and the contest on private respondents' title arose only as an incident to the issue of whom should be rightly compensated.

Contrary to petitioner's allegations, the Complaint and Amended Complaint cannot also be considered as a direct attack. The amendment merely limited the coverage of the expropriation proceedings to the uncontested portion of the subject property. The RTC's Order declaring the property as subject of conflicting claims is a recognition that there are varying claimants to the

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[34] *Cimafranca v. Intermediate Appellate Court,* 231 Phil. 559 (1987)*; Natalia Realty Corp. v. Valdez,* 255 Phil. 510 (1989); *Magay v. Estiandan,*161 Phil. 586 (1976); *Co v. CA,* 274 Phil. 108, 116 (1991).

[35] *Vicente v. Avera,* G.R. No. 169970, 20 January 2009, 576 SCRA 634; *Zaragoza v. Court of Appeals*, 395 Phil. 516 (2000).

[36] *Toyota Motors Philippines Corp. v. Court of Appeals,* G.R. No. 102881, 7 December 1992, 216 SCRA 236.

[37] *Lacbayan v. Samoy, Jr.*, G.R. No. 165427, 21 March 2011, 645 SCRA 677.

sums to be awarded as just compensation. This serves as an authority for the court to conduct a limited inquiry on the property's ownership.

WHEREFORE, the Court **GRANTS** the Petition for Review on *Certiorari* and the prayer for a Writ of Preliminary Injunction. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 93227, as well as the Decision of the Regional Trial Court, Branch 105, Quezon City in Civil Case No. Q-01-44595, are hereby **REVERSED** and **SET ASIDE**. This case is **REMANDED** to the RTC to hear the issue of ownership for the purpose of just compensation.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 189280. April 17, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO DELIGERO *y* BACASMOT,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; MORAL ASCENDANCY TAKES THE PLACE OF VIOLENCE OR INTIMIDATION; APPLICATION.— Accused-appellant's being unarmed is inconsequential considering the circumstances of the instant case. We have previously held that "in rape committed by close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed. Moral influence or ascendancy takes

the place of violence and intimidation." Accused-appellant, AAA's granduncle, is certainly a person having moral influence and ascendancy over AAA. AAA would surely observe the deference accorded by her own parents to accused-appellant, her father's uncle. Indeed, AAA herself fondly called accused-appellant as "Papa," showing that she more or less treated him like her own father.

2. REMEDIAL LAW; EVIDENCE; ; EVIDENCE OF DISPARITY IN PHYSICAL STRENGTH BETWEEN THE VICTIM AND THE ACCUSED IS DISPENSABLE.— Neither is it required that specific evidence be presented to prove the disparity in physical strength between AAA and accused-appellant. As argued by the prosecution, accused-appellant is a grown man who is used to hard work and manual labor as a farmer and a chainsaw operator, while AAA is a very young girl when she was allegedly raped and when she testified. It was the trial court which had the opportunity to observe the physical disproportion between them and considered the same in finding accused-appellant guilty. Accordingly, it is not for this Court to reverse the findings of fact of the trial court on this matter.

3. ID.; ID.; ABSENCE OF HYMENAL LACERATION NEITHER PROVES THE ABSENCE OF CARNAL KNOWLEDGE NOR THE CONSENSUAL SEXUAL INTERCOURSE.— Accused-appellant likewise points out that there was no laceration of the hymen of AAA according to the medical evidence presented by the prosecution. Certainly, accused-appellant cannot use this evidence to assert that he never had carnal knowledge of AAA, as he had already admitted the same in his assertion of his sweetheart theory. Accused-appellant even admitted in open court that he was the father of AAA's baby. Moreover, this medical finding does not prove that the sexual intercourse between accused-appellant and AAA was consensual. Prosecution witness Dr. Savella, who made the above medical finding, had adequately explained that the absence of laceration was not due to the absence of force during the intercourse, but because of the type of hymen of the subject.

4. ID.; ID.; SWEETHEART DEFENSE MUST BE CONVINCINGLY ESTABLISHED BY THE ACCUSED.— This Court has likewise repeatedly held that the sweetheart theory, as a defense, necessarily admits carnal knowledge, the first element of rape.

In *People v. Mirandilla, Jr.*, we held that "[t]his admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof; after the prosecution has successfully established a *prima facie* case, the burden of evidence is shifted to the accused, who has to adduce evidence that the intercourse was consensual." In the case at bar, accused-appellant miserably failed to discharge this burden. The testimony of the 54-year old Rudy Ecatan, which was presented by the defense to prove that accused-appellant and his 13-year old grandniece were lovers, is unconvincing and relies too much on his hasty conclusions rather than factual observations. Ecatan, who admitted that he was very close to accused-appellant, believes that accused-appellant and AAA were lovers just because the former is the father of AAA's child. The trial court was quick to discover that even this "knowledge" about the paternity of the child was hearsay[.]

5. ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— The trial court, which had the opportunity to observe the deportment and manner of testifying of Ecatan and accused-appellant, on one hand, and that of AAA, on the other, concluded that it was AAA who was telling the truth. We have repeatedly held that factual findings of the trial court, especially when affirmed by the Court of Appeals, are "entitled to great weight and respect, if not conclusiveness, for we accept that the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the offenses charged. The direct appreciation of testimonial demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified." Thus, where the accused-appellant, as in the case at bar, fails to show that both the trial court and the Court of Appeals overlooked a material fact that otherwise would change the outcome, or misappreciated a circumstance of consequence in their assessment of the credibility of the

witnesses and of their respective versions, this Court is constrained to affirm such uniform factual findings.

6. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; MINORITY; AGE OF THE VICTIM CANNOT BE PROVEN BY AN UNAUTHENTICATED COPY OF BAPTISMAL CERTIFICATE.— The Court of Appeals modified the Decision of the trial court and adjudged accused-appellant to be liable only for simple rape, ruling that the unauthenticated photocopy of AAA's baptismal certificate was not sufficient to prove the age of AAA . x x x We agree with the modification of the Court of Appeals.

7. ID.; ID.; ID.; RELATIONSHIP; GRANDUNCLE IS A RELATIVE WITHIN THE FOURTH CIVIL DEGREE AND IS NOT A QUALIFYING CIRCUMSTANCE.— [W]e note that even if the correct blood relationship of being AAA's granduncle was alleged in the Information, and the age of AAA was proven by sufficient evidence, accused-appellant would still be liable for simple rape. The granduncle, or more specifically the brother of the victim's grandfather, is a relative of the victim in the fourth civil degree, and is thus not covered by Article 266-B, paragraph 5(1).

8. ID.; ID.; AWARD OF EXEMPLARY DAMAGES, PROPER.— [T]his Court finds it appropriate to hold accused-appellant liable to AAA for exemplary damages. In *People v. Rante*, the Court held that exemplary damages can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In the case at bar, accused-appellant exhibited an extremely appalling behavior in forcing himself upon his thirteen-year old grandniece, threatening to kill her, and even persisted in humiliating her by depicting her as a girl with very loose morals. Accordingly, "to set a public example [and] serve as deterrent to elders who abuse and corrupt the youth," we hereby award exemplary damages in the amount of ₱30,000.00 to AAA in accordance with Article 2229 of the Civil Code.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00495MIN dated August 29, 2008, which affirmed with modification the conviction of accused-appellant Alberto Deligero *y* Bacasmot for the crime of rape.

Accused-appellant was charged with qualified rape in an Information dated December 16, 2002, to wit:

> The undersigned accuses ALBERTO DELIGERO *Y* BACASMOT, grandfather of herein complainant, of the crime of Rape, committed as follows:
>
> That sometime on December 15, 2000 and any time thereafter, and until July 2002, at x x x, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the use of force, did then and there willfully, unlawfully and feloniously have carnal knowledge with his own granddaughter, one [AAA], [2] a minor, 15 years of age, against her will.[3]

On September 9, 2003, accused-appellant pleaded not guilty[4] to the offense charged. Thereafter, trial ensued. The prosecution presented complainant AAA and Medico-Legal Officer Dr. Edgar S. Savella of the National Bureau of Investigation (NBI), Caraga Regional Office. We quote with approval the summary of the testimonies of the witnesses by the Court of Appeals:

> AAA was already seventeen (17) years old at the time of her testimony before the court *a quo*. She was barely thirteen (13) years old when appellant allegedly raped her.

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[1] *Rollo*, pp. 3-27; penned by Associate Justice Elihu A. Ybañez with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring.

[2] The real names of the victim and her family, with the exception of accused-appellant, are withheld pursuant to Republic Act No. 7610 and Republic Act No. 9262, as held in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[3] Records, p. 1.

[4] *Id.* at 26.

Appellant is AAA's granduncle, being the brother of her paternal grandfather. Appellant had eight (8) children from his estranged wife who lived in another *barangay*. AAA fondly calls appellant "Papa." In the early part of 2000, appellant resided with AAA's family for about four (4) months. After building his own house, appellant moved in to his new house. AAA also transferred to appellant's new house. AAA's parents were promised by appellant that he would send AAA to school. AAA recalled that she lived with appellant for about three (3) years and during those years, AAA claimed to have been raped by appellant many times.

Sometime on December 15, 2000, while inside the bedroom of appellant's house, AAA was awakened from her sleep when she felt appellant inside her "malong" which she used as blanket. Appellant, who was already naked, held AAA's hands and mounted her. While on top of AAA, appellant threatened AAA not to tell her parents because he would kill her. Appellant then inserted his penis into her vagina. AAA felt appellant's penis penetrating her four (4) times. AAA could not offer any resistance because of the threat earlier made by appellant. She felt pain and noticed that her vagina bled.

AAA further testified that her parents later on came to know of her defilement when appellant started telling the people in the neighborhood that she was pregnant. At the instance of her father, AAA and appellant were invited to the police station to be investigated. They then proceeded to the National Bureau of Investigation, Caraga Regional Office, where AAA executed her sworn statement on October 7, 2002. In the said sworn statement, AAA narrated that when the rumors of her pregnancy had spread in the neighborhood, appellant instructed her to admit that it was her boyfriend, Boyet, who was responsible for her pregnancy. Fearing for her and her family's lives, AAA claimed that she was forced to admit that it was Boyet who got her pregnant. However, the truth was that it was appellant who got her pregnant.

Dr. Edgar S. Savella, medico-legal officer of NBI Caraga Regional Office testified that when he examined AAA, the latter was already pregnant. He found no laceration in AAA's hymen. He explained that 60% of rape victims have distensible hymen, which means that no laceration can be found in the hymen. A distensible hymen admits a 2.5 cm tube, which is the average size of an adult male organ in full erection. So, if an object with a 2.5 cm diameter is inserted into the vagina with distensible hymen, the hymen will not break. When asked during cross-examination whether it was possible that the sexual

act could be consensual in the absence of laceration, Dr. Savella explained that it is the type of hymen that determines such possibility.

For the defense, appellant testified that AAA's father is his nephew, being the son of his brother. Appellant disclosed that sometime on June 2000, he lived with AAA's family and stayed with them for about four (4) months. During his four (4) month stay with AAA and her family, he slept in the sala of the family house with AAA. He claimed that since the sala was at the first floor of the house and the bedrooms were at the second floor, AAA's parents and siblings would often see him and AAA sleeping together. Oftentimes when he and AAA would sleep together at the sala, appellant testified that they shared only one (1) "malong," which they used as a blanket. After four (4) months, appellant transferred to his new house which he built fronting the house of AAA and her family. Appellant further testified that when he moved in to his new house, AAA moved in with him as well. Appellant claimed that from that time on, he and AAA were already living together as husband and wife. The alleged amorous relationship between him and AAA was known to the public, particularly their neighbors.

Sometime on June 14, 2002, AAA's mother came and fetched AAA. AAA then worked at a videoke bar. After three (3) months, AAA went home to her family but stayed there for one (1) night only. Appellant testified that AAA went back to his house and confided that she would be getting married. AAA told appellant that she'll be marrying her boyfriend, Boyet, a "tricykad" driver. In the course of their conversation, AAA confided also to appellant that her menstrual period had been delayed. Afterwhich, appellant informed AAA's father that [his] daughter could be pregnant. Instead, he was arrested and was then brought to the police station to be investigated.

At the police station, AAA allegedly admitted that it was Boyet who got her pregnant. Appellant claimed that there were people at the police station who witnessed AAA's declaration. Together with AAA's mother, appellant then brought AAA to a public hospital to have her medical examination.

On cross-examination, appellant claimed he courted AAA, which the latter accepted. During his four (4) month stay with AAA's family, he had sexual intercourse with AAA when they both slept together at the sala. When asked whether they exchanged letters professing their love for each other, appellant answered in the affirmative. The

latter testified that when he visits Gingoog City, he would send letters to AAA. On the other hand, AAA allegedly wrote him letters as well. However, appellant disclosed that he tore the letters sent to him by AAA because the latter requested him to do so for fear that her father would discover the said letters.

To bolster his claim that he and AAA were lovers, appellant testified that he intended to marry AAA. He even made AAA as one of his beneficiaries in his Social Security Service retirement plan.

Appellant also claimed that AAA's father could have been impelled by revenge in filing the case against him. According to appellant, AAA's father harbored ill-feelings towards him because he reported to his previous employer that AAA's father sold four (4) hectares of land owned by the said employer without the latter's knowledge.

Corroborating appellant's testimony that he and AAA were living together as husband and wife was Rudy L. Escatan (hereafter referred to as Rudy). Rudy testified that he knew appellant and AAA because both were his neighbors. During those times that AAA lived with appellant, Rudy would often see appellant and AAA together. Both acted as husband and wife. Further, Rudy testified that he saw appellant and AAA kissing each other numerous times.[5] (Citations omitted.)

On September 20, 2006, the trial court rendered its decision. The dispositive portion of the decision reads:

WHEREFORE, the Court finds the accused Alberto Deligero *y* Bacasmot **GUILTY** beyond reasonable doubt of the crime of rape as defined and penalized under Article 266-A, par. 1(a) in relation to Article 266-B, par. 5 of the Revised Penal Code, as amended by Republic Act No. 8353.

He is sentenced to suffer an imprisonment of ***RECLUSION PERPETUA*** instead of death by lethal injection, which penalty has been abolished.

Further, he is ordered to pay private complainant and her family the sum of Seventy[-]Five Thousand Pesos (₱75,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages.

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[5] *Rollo*, pp. 5-9.

In the service of his sentence, he shall be credited with the full time benefit during which time he has undergone preventive imprisonment if he agrees in writing to abide by the same disciplinary rules imposed upon convicted prisoners, if not only 4/5 as provided under Article 29 of the Revised Penal Code.

He shall serve his sentence at the Davao Prison and Penal Farm, Panabo City, Davao del Norte.[6]

According to the trial court, the testimony of AAA was straightforward. Accused-appellant failed to show any ill motive on the part of AAA to impute such a grave offense against her granduncle. The trial court was not convinced with the sweetheart theory advanced by accused-appellant, and observed that the latter did not admit that he and AAA were lovers when they were brought to the police substation in Butuan City. Accused-appellant instead insinuated at that time that a certain Boyet could have impregnated AAA.

Pursuant to the ruling of this Court in *People v. Mateo*,[7] the Court of Appeals conducted an intermediate review of the decision of the trial court. On August 29, 2008, the Court of Appeals rendered its decision affirming with modification the findings of the trial court:

WHEREFORE, premises considered, the Decision dated September 20, 2006 of the Regional Trial Court, 10th Judicial Region, Branch 1, Butuan City, is hereby **AFFIRMED with MODIFICATIONS**. Appellant Alberto Deligero *y* Bacasmot is **SENTENCED** to suffer the penalty of *reclusion perpetua* for the crime of simple rape committed against AAA in Criminal Case No. 9740, with no possibility for parole. Appellant is further **ORDERED** to indemnify AAA the amounts of ₱50,000.00 as civil indemnity and ₱50,000,00 as moral damages. Costs against appellant.[8]

While the Court of Appeals sustained the findings of fact by the trial court, it held that the crime committed by accused-

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[6] CA *rollo*, p. 43.

[7] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[8] *Rollo*, p. 26.

appellant was only simple rape. Primarily, the Court of Appeals held that the unauthenticated photocopy of AAA's baptismal certificate was not sufficient to prove the age of AAA. Furthermore, while it was alleged in the Information that accused-appellant is AAA's grandfather, what was proven during the trial was that he was AAA's granduncle, being the brother of AAA's paternal grandfather.

Accused-appellant appealed to this Court through a Notice of Appeal.[9] On February 22, 2010, accused-appellant filed a Manifestation[10] stating that he will no longer file a supplemental brief as all relevant matters have already been taken up in his Appellant's Brief with the Court of Appeals. Thus, he brings before us the same Assignment of Errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE DESPITE ITS INCREDIBILITY.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[11]

Accused-appellant anchors his prayer for acquittal on the following points, which, according to him, are undisputed: (1) accused-appellant was unarmed; (2) there was no proof of great disparity in terms of physical strength or capacity between accused-appellant and AAA; and (3) AAA never put the slightest resistance against accused-appellant.[12]

We find accused-appellant's contentions too feeble to warrant a reversal of his conviction.

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[9] *Id.* at 28-30.

[10] *Id.* at 47-50.

[11] CA *rollo*, pp. 15-15A.

[12] *Id.* at 15A-16.

Accused-appellant's being unarmed is inconsequential considering the circumstances of the instant case. We have previously held that "in rape committed by close kin, such as the victim's father, stepfather, uncle, or the common-law spouse of her mother, it is not necessary that actual force or intimidation be employed. Moral influence or ascendancy takes the place of violence and intimidation."[13] Accused-appellant, AAA's granduncle, is certainly a person having moral influence and ascendancy over AAA. AAA would surely observe the deference accorded by her own parents to accused-appellant, her father's uncle. Indeed, AAA herself fondly called accused-appellant as "Papa," showing that she more or less treated him like her own father.

Neither is it required that specific evidence be presented to prove the disparity in physical strength between AAA and accused-appellant. As argued by the prosecution, accused-appellant is a grown man who is used to hard work and manual labor as a farmer and a chainsaw operator, while AAA is a very young girl when she was allegedly raped and when she testified. It was the trial court which had the opportunity to observe the physical disproportion between them and considered the same in finding accused-appellant guilty. Accordingly, it is not for this Court to reverse the findings of fact of the trial court on this matter.

Accused-appellant's assertion that "there is nothing in the record that would show that [accused-appellant] verbally threatened the complainant in order to accomplish the x x x bestial acts"[14] is downright misleading. AAA clearly stated in her testimony that accused-appellant threatened to kill her:

Q What was his position when he was inside your "*malong*" that woke you up?

A He was holding my hands and he was on top of me.

Q What was he wearing while he was inside your "*malong*" holding your hands and he was on top of you?

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[13] *People v. Yatar*, G.R. No. 150224, May 19, 2004, 428 SCRA 504, 521.

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

A He was already naked.

Q And when he laid on top of you what else did he do?
A He told me not to tell my parents what he was doing to me.

Q You said he raped you, how did he rape you?
A He laid himself on top of me and threatened me not to tell my parents what happened because if I would, he will kill me.[15]

Accused-appellant likewise points out that there was no laceration of the hymen of AAA according to the medical evidence presented by the prosecution. Certainly, accused-appellant cannot use this evidence to assert that he never had carnal knowledge of AAA, as he had already admitted the same in his assertion of his sweetheart theory. Accused-appellant even admitted in open court that he was the father of AAA's baby.[16]

Moreover, this medical finding does not prove that the sexual intercourse between accused-appellant and AAA was consensual. Prosecution witness Dr. Savella, who made the above medical finding, had adequately explained that the absence of laceration was not due to the absence of force during the intercourse, but because of the type of hymen of the subject. This echoes the observation in *People v. Llanto*, [17] where this Court noted several extreme cases of distensible or elastic hymen remaining intact in spite of sexual contact:

> [I]t is possible for the victim's hymen to remain intact despite repeated sexual intercourse. x x x. Likewise, whether the accused's penis fully or only partially penetrated the victim's genitalia, it is still possible that her hymen would remain intact because it was thick and distensible or elastic. We stated in *People v. Aguinaldo* that the strength and dilability of the hymen varies from one woman to another such that it may be so elastic as to stretch without laceration during intercourse, or on the other hand, may be so resistant that its surgical removal is necessary before intercourse can ensue. In some cases

[15] TSN, March 10, 2004, p. 8.

[16] TSN, April 22, 2005, pp. 9-10.

[17] 443 Phil. 580, 594 (2003).

even, the hymen is still intact even after the woman has given birth. (Citations omitted.)

Furthermore, an examination of the testimony of AAA shows that the alleged rape had not been attended by a huge physical struggle that would have caused injuries to AAA. Instead, accused-appellant apparently subdued AAA by threatening to kill her. The lack of injuries, therefore, is consistent with the testimonial evidence presented by the prosecution.

This Court has likewise repeatedly held that the sweetheart theory, as a defense, necessarily admits carnal knowledge, the first element of rape. In *People v. Mirandilla, Jr.*,[18] we held that "[t]his admission makes the sweetheart theory more difficult to defend, for it is not only an affirmative defense that needs convincing proof; after the prosecution has successfully established a *prima facie* case, the burden of evidence is shifted to the accused, who has to adduce evidence that the intercourse was consensual."

In the case at bar, accused-appellant miserably failed to discharge this burden. The testimony of the 54-year old Rudy Ecatan, which was presented by the defense to prove that accused-appellant and his 13-year old grandniece were lovers, is unconvincing and relies too much on his hasty conclusions rather than factual observations. Ecatan, who admitted that he was very close to accused-appellant,[19] believes that accused-appellant and AAA were lovers just because the former is the father of AAA's child. The trial court was quick to discover that even this "knowledge" about the paternity of the child was hearsay:

Q What can you say to the charge against Alberto Deligero?
A It is a lie, sir.

Q Why do you say that it is a lie?
A Because the girl had delivered a baby.

Court:

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[18] G.R. No. 186417, July 27, 2011, 654 SCRA 761, 772.

[19] TSN, March 16, 2006, p. 7.

Q Who is the father of the baby?
A Alberto.

Q How did you know that?
A I know about this because they are our neighbors.[20]

Ecatan's reliance on hearsay was further shown by his unawareness of the true blood relationship between AAA and accused-appellant:

Q How is Alberto related to [AAA]?
A They are saying that Alberto is the grandfather of [AAA].

Q Is it true that Alberto Deligero is really the grandfather of [AAA]?
A Yes, sir.

Q Because their family names are the same?
A Yes, sir.[21]

Accused-appellant's indecisiveness with his defense shows as well that he was being less than truthful. During the initial investigation, he claimed that a certain Boyet was AAA's boyfriend and was the father of AAA's child. During the trial, however, after AAA denied knowing any person named Boyet, accused-appellant now claims that he and AAA were lovers.

The trial court, which had the opportunity to observe the deportment and manner of testifying of Ecatan and accused-appellant, on one hand, and that of AAA, on the other, concluded that it was AAA who was telling the truth. We have repeatedly held that factual findings of the trial court, especially when affirmed by the Court of Appeals, are "entitled to great weight and respect, if not conclusiveness, for we accept that the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions of the events that made up the occurrences constituting the ingredients of the offenses charged. The direct appreciation of testimonial

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

[21] *Id.* at 6.

demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified."[22] Thus, where the accused-appellant, as in the case at bar, fails to show that both the trial court and the Court of Appeals overlooked a material fact that otherwise would change the outcome, or misappreciated a circumstance of consequence in their assessment of the credibility of the witnesses and of their respective versions, this Court is constrained to affirm such uniform factual findings.

The trial court found accused-appellant guilty of qualified rape under Article 266-B, paragraph 5(1) of the Revised Penal Code, which provides:

> 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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

The Court of Appeals modified the Decision of the trial court and adjudged accused-appellant to be liable only for simple rape, ruling that the unauthenticated photocopy of AAA's baptismal certificate was not sufficient to prove the age of AAA. The Court of Appeals furthermore ruled that while it was alleged in the Information that accused-appellant is AAA's grandfather, what was proven during the trial was that he was AAA's granduncle, being the brother of AAA's paternal grandfather.

We agree with the modification of the Court of Appeals. Moreover, we note that even if the correct blood relationship

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[22] *People v. Taguibuya*, G.R. No. 180497, October 5, 2011, 658 SCRA 685, 690-691, citing *People v. Condes*, G.R. No. 187077, February 23, 2011, 644 SCRA 312, 322-323; *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306, 314; *People v. Cabugatan*, 544 Phil. 468, 479 (2007); *People v. Taan*, 536 Phil. 943, 954 (2006); *Bricenio v. People*, 524 Phil. 786, 793-794 (2006); *People v. Pacheco*, 468 Phil. 289, 299-300 (2004).

of being AAA's granduncle was alleged in the Information, and the age of AAA was proven by sufficient evidence, accused-appellant would still be liable for simple rape. The granduncle, or more specifically the brother of the victim's grandfather, is a relative of the victim in the fourth civil degree, and is thus not covered by Article 266-B, paragraph 5(1).

Finally, this Court finds it appropriate to hold accused-appellant liable to AAA for exemplary damages. In *People v. Rante*,[23] the Court held that exemplary damages can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In the case at bar, accused-appellant exhibited an extremely appalling behavior in forcing himself upon his thirteen-year old grandniece, threatening to kill her, and even persisted in humiliating her by depicting her as a girl with very loose morals. Accordingly, "to set a public example [and] serve as deterrent to elders who abuse and corrupt the youth,"[24] we hereby award exemplary damages in the amount of ₱30,000.00 to AAA in accordance with Article 2229[25] of the Civil Code.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00495MIN dated August 29, 2008 is hereby **AFFIRMED** with **MODIFICATION**. In addition to the amounts awarded by the Court of Appeals, accused-appellant Alberto Deligero *y* Bacasmot is further ordered to pay ₱30,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[23] G.R. No. 184809, March 29, 2010, 617 SCRA 115, 127.

[24] *Id.*

[25] Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

FIRST DIVISION

[G.R. No. 191396. April 17, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARILYN AGUILAR *y* MANZANILLO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); CHAIN OF CUSTODY, ESTABLISHED; THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEMS SEIZED FROM THE ACCUSED ARE PRESERVED DESPITE FAILURE OF THE APPREHENDING OFFICERS TO MAKE INVENTORY AND TO PHOTOGRAPH THE SAME.— While a testimony about a perfect and unbroken chain is ideal, such is not always the standard as it is almost always impossible to obtain an unbroken chain. A perusal of the law reveals, however, that failure to strictly comply with the procedure in Section 21 will not render the arrest illegal or the items seized inadmissible in evidence, provided that the integrity and evidentiary value of such items are preserved since they will be used in the determination of the guilt or innocence of the accused. Despite the failure of the apprehending officers to make an inventory of and to photograph the items seized from Aguilar, they were nevertheless able to prove that the integrity and evidentiary value of the evidence had been preserved, the chain of custody of such items, having been adequately established in the case at bar. x x x Moreover, Aguilar was not able to show that there was bad faith or ill will on the part of the police officers, or tampering with the evidence, thus the presumption that the integrity of the evidence was preserved remains. The same applies to the presumption that the police officers properly discharged their duties. Since Aguilar failed to overcome the foregoing presumptions, it cannot be disputed that the drugs seized from her were the same ones examined in the crime laboratory and presented in court during trial. The crucial link in the chain of custody of the seized drugs was therefore established by the prosecution.

2. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS, ELEMENTS OF; PROVEN.— [T]his Court, in *People v. Del Rosario,* held:

In a prosecution for the sale of a dangerous drug, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Simply put, "[in] prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence." As the poseur-buyer, PO2 Medrano was able to positively identify Aguilar as the seller of the *shabu* during his testimony. He also testified on the exchange of the marked money and *shabu* that he and Aguilar had during their transaction. More importantly, the prosecution was able to present the very same marked money and *shabu*, the *corpus delicti*, to the court as evidence.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS, ELEMENTS OF; ESTABLISHED.— With respect to the charge of illegal possession of dangerous drugs, this Court finds that the prosecution sufficiently established the following elements: 1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. Aside from the *shabu* Aguilar sold to PO2 Medrano, another sachet of *shabu* was recovered in her possession. Mere possession of a prohibited drug constitutes *prima facie* evidence of intent to possess, *animus possidendi*, sufficient to convict an accused absent a satisfactory explanation of such possession. The burden of evidence, thus, is shifted to the accused to explain the absence of intent to possess. Aguilar miserably failed to discharge such burden.

4. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND FRAME-UP; CONSISTENTLY LOOKED UPON WITH DISFAVOR BY THE COURT.— Time and again, this Court has looked at the defenses of denial and frame-up with disfavor. While Aguilar's niece, Lazaro, did testify in her defense, this Court, in agreement with the observation of the Court of Appeals, cannot give such testimony full faith and credit as Lazaro herself declared that she would testify on anything for her aunt and she came to court to help in the release of her aunt. This admission of absolute willingness to make declarations in court for the singular purpose of judicial proceedings to ascertain

the truth and adversely affects the credibility of the witness. The explanation of this Court in *People v. Cruz* with regard to the defenses of denial and frame-up finds applicability in this case, given that Aguilar also accused the police officers of extorting money from her, to wit: Denial or frame-up is a standard defense ploy in most prosecutions for violation of the Dangerous Drugs Law. As such, it has been viewed by the court with disfavor for it can just as easily be concocted. It should not accord a redoubtable sanctuary to a person accused of drug dealing unless the evidence of such frame up is clear and convincing.

5. ID.; ID.; DEFENSE OF INSTIGATION, NOT ESTABLISHED; THERE WAS NO SHOWING THAT THE INFORMANT EMPLOYED ANY ACT OF INDUCEMENT TO THE ACCUSED.— This Court finds Aguilar's defense of instigation unworthy of belief. It has been established that when the accused is charged with the sale of illicit drugs, the following defenses cannot be set up: (1) that facilities for the commission of the crime were intentionally placed in his way; or (2) that the criminal act was done at the solicitation of the decoy or poseur-buyer seeking to expose his criminal act; or (3) that police authorities feigning complicity in the act were present and apparently assisted in its commission. x x x This Court agrees with the Court of Appeals' pronouncement that "[t]here was no showing that the informant employed any act of inducement such as repeated requests for the sale of prohibited drugs or offers of exorbitant prices." Aguilar was never forced or coerced to sell the prohibited drug to PO2 Medrano. In fact, PO2 Medrano did not even have to say anything as Aguilar immediately asked him how much he wanted after he was introduced as a "scorer." When PO2 Medrano mentioned the quantity he desired to purchase, Aguilar promptly took the marked money from him and readily handed him the *shabu*. All these show that Aguilar had been habitually engaged in the sale of drugs. Also, such circumstances not only authorized, but obligated the police officers to arrest Aguilar, despite the lack of arrest warrant, as the crime was committed in their presence.

6. ID.; ID.; ID.; DEFENSE OF INSTIGATION IS CONTRADICTORY TO THE DEFENSE OF DENIAL AND FRAME-UP.— It is worthy to note that, aside from the fact that this defense was only

brought up on appeal, it is being submitted along with the defenses of denial and frame-up. Aguilar cannot logically claim on one hand that she did not commit the acts constituting the charges against her, and at the same time ask this Court to consider that while she may have committed the act, she had been instigated to commit such crime. The defense of instigation is simply contradictory to the defenses of denial and frame-up.

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 is the November 26, 2009 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 01984, which affirmed the August 19, 2005 Decision[2] of the Regional Trial Court (RTC) in Criminal Case Nos. 04-2962-CFM and 04-2963-CFM, wherein accused-appellant Marilyn Aguilar *y* Manzanillo (Aguilar) was found guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drug Act of 2002."

On December 1, 2004, two separate Informations were filed against Aguilar in the Pasay City RTC, Branch 116 charging her with violation of Sections 5 and 11, respectively, of Article II of Republic Act No. 9165. The pertinent portions of the Informations read as follows:

Criminal Case No. 04-2962-CFM:

That on or about the 30th day of November, 2004, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable

[1] *Rollo*, pp. 2-18; penned by Associate Justice Mario V. Lopez with Associate Justices Rebecca de Guia-Salvador and Apolinario D. Bruselas, Jr., concurring.

[2] CA *rollo*, pp. 18-26; penned by Judge Eleuterio F. Guerrero.

Court, the above-named accused, Marilyn Aguilar *y* Manzanillo, without authority of law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control [of] 0.31 gram of Methamphetamine Hydrochloride (*shabu*), a dangerous drug.[3]

Criminal Case No. 04-2963-CFM:

That on or about the 30th day of November, 2004, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Marilyn Aguilar *y* Manzanillo, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to another 0.45 gram of Methamphetamine Hydrochloride (*shabu*), a dangerous drug.[4]

Aguilar pleaded not guilty to both charges when arraigned on January 10, 2005.[5] During the pre-trial conference[6] on February 16, 2005, Aguilar and her counsel admitted the genuineness and due execution of the Letter Request for Drug Test, Initial Laboratory Report, Request for Laboratory Examination, and photocopy of the marked money in evidence. Counsel for Aguilar also admitted Aguilar's identity as the one arrested by the police officers on November 30, 2004, as indicated in the Informations. The parties also agreed that among the issues to be resolved by the RTC were the validity of Aguilar's arrest and the subsequent search of her person absent the necessary warrants.

Trial then ensued with the prosecution presenting Police Officer 2 (PO2) Roel Medrano, the poseur-buyer who was a member of the Philippine National Police (PNP) assigned at the Anti-Illegal Drugs, Special Operation Task Force of the Southern Police District at Fort Bonifacio in Taguig, Manila. It also presented Police Inspector (P/Insp.) Angel Timario, the Forensic Chemist of the PNP Crime Laboratory in Camp Crame, Quezon City who conducted the examination of the drugs. After the

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[3] Records, pp. 2-3.

[4] *Id.* at 18-19.

[5] *Id.* at 35-36.

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

prosecution rested its case, the defense presented Aguilar herself and her niece, Gerolyn A. Lazaro (Lazaro).

Version of the Prosecution

According to PO2 Medrano, a week prior to Aguilar's arrest on November 30, 2004, he had already received some phone calls from "concerned citizens"[7] regarding the drug-dealing activities of one "Baby Mata" at Pildera, Pasay City. PO2 Medrano verified the information by calling on Eva, his informant, who was also a drug user. Eva confirmed that she personally knew Baby Mata, who was her regular drug-supplier. PO2 Medrano thereafter learned of Baby Mata's residence at Road IV near the *barangay* hall, and that she was plying her trade at Road I. Although he placed Baby Mata under surveillance, PO2 Medrano admitted that he did not actually see her selling drugs to customers.[8]

On November 30, 2004, a team, led by Senior Police Officer (SPO) 2 Rey Millare, was formed to conduct an entrapment operation against Aguilar. The team submitted a pre-operation report to the Philippine Drug Enforcement Agency (PDEA) and PO2 Medrano was designated as the poseur-buyer. He was provided with two ₱500.00 bills, the serial numbers of which he noted and thereafter marked with "JG," the initials of P/Supt. Jose Gentiles, the Chief of the District Intelligence and Investigation Branch. At around 6:20 in the evening, the team was in place at Pildera to conduct the buy-bust operation. With Eva, PO2 Medrano went to Road I, where they saw Baby Mata talking to someone. When the person left, Eva approached Baby Mata and after about five minutes, waved at PO2 Medrano to come over. Eva introduced PO2 Medrano as a security guard and a fellow "scorer." Baby Mata then asked how much PO2 Medrano wanted, to which he answered "*isang bulig lang*,"[9] which was half a gram of *shabu*, worth ₱1,000.00.

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[7] TSN, March 21, 2005, p. 6.

[8] *Id.* at 4-10.

[9] *Id.* at 18.

Upon Baby Mata's request, PO2 Medrano gave her the two pre-marked ₱500.00 bills, which she took with her left hand. Baby Mata, with her right hand, thereafter reached for a plastic sachet containing crystalline substance from the right pocket of her jeans, and handed it to PO2 Medrano. After examining the sachet, PO2 Medrano pocketed the *shabu* and pressed the call button of his mobile phone, to signal his team that the sale had been consummated. PO2 Benedicto A. Mendoza (Mendoza), who was then only seven to eight meters away, rushed towards them and arrested Baby Mata. The police officers immediately introduced themselves as such, showed Baby Mata their identification cards, and apprised her of her constitutional rights. PO2 Medrano confiscated the buy-bust money he earlier handed Baby Mata, which were still in her left hand, and another sachet of *shabu*, which turned up after she was ordered to empty her pockets. PO2 Medrano accordingly marked the two sachets of *shabu* with "RM-1" and "RM-2" and thereafter brought Baby Mata to the Southern Police District Station at Fort Bonifacio, Taguig.[10]

The seized items were brought by PO2 Medrano on the same day to the PNP Crime Laboratory in Camp Crame, Quezon City. They were received and examined by P/Insp.Timario who made the following findings, as embodied in Chemistry Report No. D-1171-04:

SPECIMEN SUBMITTED:

A – One (1) staple-sealed brown envelope with names and signatures containing two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and net weights:

A-1 - (RM-1 301104) = 0.45 gram

A-2 - (RM-2 301104) = 0.31 gram

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs.

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[10] *Id.* at 11-22.

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave **POSITIVE** result to the tests for Methylamphetamine hydrochloride, a dangerous drug.

CONCLUSION:

Specimens A-1 and A-2 contain Methylamphetamine hydrochloride, a dangerous drug.

x x x x x x x x x

REMARKS:

TIME AND DATE COMPLETED:

0120H 01 December 2004

EXAMINED BY:
(SGD.)
ANGEL C. TIMARIO
Police Inspector
Forensic Chemist[11]

Version of the Defense

Aguilar contradicted the prosecution and denied the charges against her. She claimed that on November 30, 2004, at around 10:00 a.m., while she and her niece, Lazaro, were waiting for a *jeepney* to Baclaran along NAIA Road, PO2 Medrano and PO2 Mendoza accosted and handcuffed her without any explanation. When she asked why she was being apprehended, she was simply told to explain at the station. Lazaro in the meantime remained quiet so as not to reveal her identity as Aguilar's companion. Aguilar was then boarded in a yellow car and while she was being driven around Nayong Pilipino, PO2 Medrano allegedly told her that they needed money and requested for her cooperation by giving up "Lilit,"[12] a drug-pusher. At the station, the same police officers demanded

[11] Records, p. 90.

[12] TSN, August 3, 2005, p. 4.

that she produce the amount of ₱100,000.00 and asked her to call her relatives for the money.[13]

Aguilar argued that there could have been no buy-bust operation as she was already in detention at the station at the time such operation was supposedly conducted. She averred that while she was once a resident of Pasay City, she no longer lived there and that she would only go there to visit her mother. As to her nickname, Aguilar explained that she had always been called as such.[14]

Lazaro corroborated Aguilar's testimony but could not provide certain details such as where the car was headed or at which precinct Aguilar was taken when they received the call from the police informing them of Aguilar's arrest. She also said that Aguilar already resided in Bulacan and she was known as "Baby Mata" because of her big eyes.[15]

Ruling of the RTC

On August 19, 2005, the RTC gave credence to the prosecution's version and found Aguilar guilty beyond reasonable doubt in both cases, to wit:

WHEREFORE, in x x x light of the foregoing premises and considerations, judgment is hereby rendered as follows:

1) In Criminal Case No. 04-2962-CFM, this Court finds the accused Marilyn Aguilar *y* Manzanillo GUILTY beyond reasonable doubt of committing the crime of Violation of Section 11, sub-paragraph (3), Article II of R.A. No. 9165 and she is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and four (4) months and to pay a fine of ₱300,000.00, plus costs; and

2) In Criminal Case No. 04-2963-CFM, this Court likewise finds the said accused GUILTY beyond reasonable doubt of committing the crime of Violation of Section 5, Article II of R.A. No. 9165 and

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[13] *Id.* at 3-4.

[14] *Id.* at 5.

[15] TSN, May 17, 2005, pp. 4-12.

she is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of ₱500,000.00, plus costs.

The two (2) 0.31 and 0.45 gram of Methamphetamine hydrochloride or *shabu* involved in these cases are hereby declared confiscated in favor of the Government and ordered to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper and appropriate disposition in accordance with the provisions of the law.[16]

Aguilar's denial and theory of frame-up, the RTC held, cannot be accepted over the prosecution's case, which was not only clear and convincing, but also amply supported by the evidence.

Aguilar appealed[17] the RTC's decision to the Court of Appeals and the case was docketed as CA-G.R. CR.-H.C. No. 01984.

Ruling of the Court of Appeals

Finding that the prosecution has proven Aguilar's guilt of the two crimes beyond reasonable doubt, the Court of Appeals affirmed the RTC's Decision on November 26, 2009.

Issues

Aggrieved, Aguilar elevated[18] the above ruling to this Court, assigning the same errors she assigned before the Court of Appeals,[19] *viz*:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTIONS 5 AND 11, ARTICLE II [OF] REPUBLIC ACT [NO.] 9165.

II

THE COURT A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF DENIAL AND FRAME-UP.[20]

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[16] CA *rollo*, pp. 25-26.

[17] *Id.* at 27.

[18] *Id.* at 109-111.

[19] *Rollo*, pp. 62-63.

[20] CA *rollo*, p. 36.

In the main, Aguilar argues that the RTC erred in convicting her as the prosecution failed to establish her guilt beyond reasonable doubt. In support of such assertion, Aguilar points out the fact that the police officers failed to follow the protocol in the custody and control of seized items due to the absence of an inventory and photographs of the confiscated drugs as required by Republic Act No. 9165 and its implementing rules and regulations.

Aguilar further posits that she should be acquitted because "without the instigation of the informant the alleged transaction involving the sale of *shabu* would not have transpired."[21]

This Court's Ruling

This Court has made an exhaustive review of the records of this case and has found no reason to overturn the lower courts.

Aguilar was charged and convicted for the sale and possession of dangerous drugs in violation of Sections 5 and 11, Article II of Republic Act No. 9165. The pertinent provisions provide:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

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

[21] *Id.* at 47.

controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x x x x x x

SEC. 11. *Possession of Dangerous Drugs*. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;

(2) 10 grams or more of morphine;

(3) 10 grams or more of heroin;

(4) 10 grams or more of cocaine or cocaine hydrochloride;

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

(6) 10 grams or more of marijuana resin or marijuana resin oil;

(7) 500 grams or more of marijuana; and

(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (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, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) 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 three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(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.

Custody and Control of Evidence

Paragraph 1, Section 21, Article II of Republic Act No. 9165 outlines the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs, *viz*:

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[.]

Implementing the above provision, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, states:

SEC. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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.)

While a testimony about a perfect and unbroken chain is ideal, such is not always the standard as it is almost always impossible to obtain an unbroken chain.[22] A perusal of the law reveals, however, that failure to strictly comply with the procedure in Section 21 will not render the arrest illegal or the items seized inadmissible in evidence, provided that the integrity and evidentiary value of such items are preserved since they will be used in the determination of the guilt or innocence of the accused.[23]

Despite the failure of the apprehending officers to make an inventory of and to photograph the items seized from Aguilar, they were nevertheless able to prove that the integrity and evidentiary value of the evidence had been preserved, the chain of custody of such items, having been adequately established in the case at bar. As aptly observed by the Court of Appeals:

> It was undisputed that at about 6:20 in the evening of November 30, 2004, PO2 Medrano bought a sachet of *shabu* from accused-appellant which he paid with two (2) ₱500.00 marked bill[s]. PO2 Medrano placed the *shabu* in his pocket then executed the pre-arranged signal. After arresting accused-appellant, PO2 Medrano seized the marked money from the former's left hand then frisked accused-appellant and found another sachet of *shabu*. He marked the sachet of *shabu* he bought "RM-1" and the one he found in accused-appellant's pocket "RM-2". They brought accused-appellant and the seized items to the headquarters. While accused-appellant was being booked, the team prepared the request for laboratory examination. The request and the seized drugs were personally brought by PO2 Medrano to the PNP Crime Laboratory in Quezon City that same evening. P/Insp. Angel Timario received the request and specimens brought by PO2 Medrano. He weighed and examined the contents of the sachets, confirming that the items were methamphetamine hydrochloride or *shabu*. His findings are embodied in Chemistry Report No. D-1171-04. The specimens which bore the markings "RM-1" and "RM-2" were identified by PO2 Medrano during trial.[24] (Citations omitted.)

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[22] *People v. Castro*, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 404-405.

[23] *People v. Malik Manalao*, G.R. No. 187496, February 6, 2013.

[24] *Rollo*, pp. 15-16.

Moreover, Aguilar was not able to show that there was bad faith or ill will on the part of the police officers, or tampering with the evidence, thus the presumption that the integrity of the evidence was preserved remains. The same applies to the presumption that the police officers properly discharged their duties. Since Aguilar failed to overcome the foregoing presumptions, it cannot be disputed that the drugs seized from her were the same ones examined in the crime laboratory and presented in court during trial. The crucial link in the chain of custody of the seized drugs was therefore established by the prosecution.[25]

Proof Beyond Reasonable Doubt Established

Aguilar, having failed to convince this Court that the consistent findings of the lower courts are tainted with arbitrariness, capriciousness, or palpable errors, then the hornbook doctrine that the factual findings of the Court of Appeals, affirming those of the RTC, are binding, applies.[26]

1. Illegal Sale of Dangerous Drugs

To successfully prosecute a case for the illegal sale of dangerous drugs, this Court, in *People v. Del Rosario*,[27] held:

> In a prosecution for the sale of a dangerous drug, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Simply put, "[in] prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence." (Citations omitted.)

As the poseur-buyer, PO2 Medrano was able to positively identify[28] Aguilar as the seller of the *shabu* during his testimony. He also testified on the exchange of the marked money and

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[25] *People v. Castro, supra* note 22 at 407.

[26] *Id.*

[27] G.R. No. 188107, December 5, 2012.

[28] TSN, March 21, 2005, p. 23.

shabu that he and Aguilar had during their transaction. More importantly, the prosecution was able to present the very same marked money and *shabu*, the *corpus delicti*, to the court as evidence.

2. Illegal Possession of Dangerous Drugs

With respect to the charge of illegal possession of dangerous drugs, this Court finds that the prosecution sufficiently established the following elements:

1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug;

(2) such possession is not authorized by law; and

(3) the accused freely and consciously possessed the drug.[29]

Aside from the *shabu* Aguilar sold to PO2 Medrano, another sachet of *shabu* was recovered in her possession. Mere possession of a prohibited drug constitutes *prima facie* evidence of intent to possess, *animus possidendi*, sufficient to convict an accused absent a satisfactory explanation of such possession. The burden of evidence, thus, is shifted to the accused to explain the absence of intent to possess.[30] Aguilar miserably failed to discharge such burden.

Defenses of Denial and Frame-up

Time and again, this Court has looked at the defenses of denial and frame-up with disfavor. While Aguilar's niece, Lazaro, did testify in her defense, this Court, in agreement with the observation of the Court of Appeals, cannot give such testimony full faith and credit as Lazaro herself declared that she would testify on anything for her aunt[31] and she came to court to help in the release of her aunt.[32] This admission of absolute willingness

[29] *Asiatico v. People*, G.R. No. 195005, September 12, 2011, 657 SCRA 443, 450.

[30] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011, 640 SCRA 697, 716.

[31] TSN, May 17, 2005, p. 13.

[32] *Id.* at 15.

to make declarations in court for the singular purpose of judicial proceedings to ascertain the truth and adversely affects the credibility of the witness.

The explanation of this Court in *People v. Cruz*[33] with regard to the defenses of denial and frame-up finds applicability in this case, given that Aguilar also accused the police officers of extorting money from her, to wit:

> Denial or frame-up is a standard defense ploy in most prosecutions for violation of the Dangerous Drugs Law. As such, it has been viewed by the court with disfavor for it can just as easily be concocted. It should not accord a redoubtable sanctuary to a person accused of drug dealing unless the evidence of such frame up is clear and convincing. Without proof of any intent on the part of the police officers to falsely impute appellant in the commission of a crime, the presumption of regularity in the performance of official duty and the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, deserve to prevail over the bare denials and self-serving claims of appellant that he had been framed up. Neither can appellant's claim of alleged extortion by the police operatives be entertained. Absent any proof, appellant's assertion of extortion allegedly committed by the police officers could not be successfully interposed. It remains one of those standard, worn-out, and impotent excuses of malefactors prosecuted for drug offenses. What appellant could have done was to prove his allegation and not just casually air it. (Citations omitted.)

Defense of Instigation

Aguilar further claims that the validity of the buy-bust operation is doubtful as she was instigated to sell *shabu* to PO2 Medrano. In support, Aguilar quotes PO2 Medrano's own testimony wherein he agreed to the possibility that his informant may have instigated the sale.[34]

In resolving issues involving the validity of a buy-bust operation, specifically the question of whether the government had induced

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[33] *People v. Cruz*, G.R. No. 187047, June 15, 2011, 652 SCRA 286, 301-302.

[34] CA *rollo*, pp. 44-47.

the accused to commit the offense as charged, this Court usually finds it instructive to first distinguish between entrapment and instigation. This Court's distinction in the recent case of *People v. Legaspi*,[35] is elucidative, to wit:

> Entrapment is sanctioned by the law as a legitimate method of apprehending criminals. Its purpose is to trap and capture lawbreakers in the execution of their criminal plan. Instigation, on the other hand, involves the inducement of the would-be accused into the commission of the offense. In such a case, the instigators become co-principals themselves.
>
> Where the criminal intent originates in the mind of the instigating person and the accused is lured into the commission of the offense charged in order to prosecute him, there is instigation and no conviction may be had. Where, however, the criminal intent originates in the mind of the accused and the criminal offense is completed, even after a person acted as a decoy for the state, or public officials furnished the accused an opportunity for the commission of the offense, or the accused was aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is no instigation and the accused must be convicted. The law in fact tolerates the use of decoys and other artifices to catch a criminal. (Citations omitted.)

This Court recognizes instigation as a valid defense that can be raised by the accused. However, for this defense to prosper, the accused must prove, with sufficient evidence, that the government induced him or her to commit the offense.[36] Aguilar claims that she was instigated by the informant to sell *shabu* to PO2 Medrano. Her only evidence to support this claim was her interpretation of PO2 Medrano's testimony.

This Court finds Aguilar's defense of instigation unworthy of belief. It has been established that when the accused is charged with the sale of illicit drugs, the following defenses cannot be set up:

(1) that facilities for the commission of the crime were intentionally placed in his way; or

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[35] G.R. No. 173485, November 23, 2011, 661 SCRA 171, 180.

[36] *Id.* at 181.

(2) that the criminal act was done at the solicitation of the decoy or poseur-buyer seeking to expose his criminal act; or

(3) that police authorities feigning complicity in the act were present and apparently assisted in its commission.[37] (Citation omitted.)

In *Legaspi*, we added: "[t]he foregoing are especially true in that class of cases where the offense is the kind that is habitually committed, and the solicitation merely furnished evidence of a course of conduct. Mere deception by the police officer will not shield the perpetrator, if the offense was committed by him free from the influence or the instigation of the police officer."[38] The illegal sale and possession of dangerous drugs belong to such class of cases and buy-bust operations employing poseur-buyers are legally permissible to expose the offender and catch him in the act.

This Court agrees with the Court of Appeals' pronouncement that "[t]here was no showing that the informant employed any act of inducement such as repeated requests for the sale of prohibited drugs or offers of exorbitant prices."[39] Aguilar was never forced or coerced to sell the prohibited drug to PO2 Medrano. In fact, PO2 Medrano did not even have to say anything as Aguilar immediately asked him how much he wanted after he was introduced as a "scorer."[40] When PO2 Medrano mentioned the quantity he desired to purchase, Aguilar promptly took the marked money from him and readily handed him the *shabu*. All these show that Aguilar had been habitually engaged in the sale of drugs. Also, such circumstances not only authorized, but obligated the police officers to arrest Aguilar, despite the lack of arrest warrant, as the crime was committed in their presence.[41]

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[37] *Id.*

[38] *Id.*

[39] *Rollo*, p. 10.

[40] TSN, March 21, 2005, p. 18.

[41] *People v. Legaspi, supra* note 35 at 182.

It is worthy to note that, aside from the fact that this defense was only brought up on appeal, it is being submitted along with the defenses of denial and frame-up. Aguilar cannot logically claim on one hand that she did not commit the acts constituting the charges against her, and at the same time ask this Court to consider that while she may have committed the act, she had been instigated to commit such crime. The defense of instigation is simply contradictory to the defenses of denial[42] and frame-up.

WHEREFORE, premises considered, the Court hereby **AFFIRMS** the November 26, 2009 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01984.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 191667. April 17, 2013]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **EDUARDO M. CACAYURAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; *LOCUS STANDI*; TAXPAYER'S SUIT; REQUISITES.— It is hornbook principle that a taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any

[42] *Id.* at 185.

improper purpose, or that there is wastage of public funds through the enforcement of an invalid or unconstitutional law. A person suing as a taxpayer, however, must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation. In other words, for a taxpayer's suit to prosper, two requisites must be met namely, (1) public funds derived from taxation are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed; and (2) the petitioner is directly affected by the alleged act.

2. ID.; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; CHIEF EXECUTIVES; THE OBLIGATION WHICH THE LOCAL EXECUTIVE IS AUTHORIZED TO ENTER INTO MUST BE MADE PURSUANT TO A LAW OR ORDINANCE; ORDINANCES AND RESOLUTIONS, DISTINGUISHED.— A careful perusal of Section 444(b)(1)(vi) of the LGC shows that while the authorization of the municipal mayor need not be in the form of an ordinance, **the obligation which the said local executive is authorized to enter into must be made pursuant to a law or ordinance** x x x. In the present case, while Mayor Eriguel's authorization to contract the Subject Loans was not contained – as it need not be contained – in the form of an ordinance, the said loans and even the Redevelopment Plan itself were not approved pursuant to any law or ordinance but through mere resolutions. The distinction between ordinances and resolutions is well-perceived. While ordinances are laws and possess a general and permanent character, resolutions are merely declarations of the sentiment or opinion of a lawmaking body on a specific matter and are temporary in nature. As opposed to ordinances, "no rights can be conferred by and be inferred from a resolution." In this accord, it cannot be denied that the SB violated Section 444(b)(1)(vi) of the LGC altogether.

3. ID.; ID.; ID.; MUNICIPAL CORPORATIONS; *ULTRA VIRES* ACTS; TYPES.— Generally, an *ultra vires* act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the powers conferred upon it by law. There are two (2) types of *ultra vires* acts. x x x [A]n act which is outside of the municipality's jurisdiction is considered as a void *ultra vires* act, while an act attended only by an irregularity but remains within the municipality's power is considered as an *ultra vires* act subject

to ratification and/or validation. To the former belongs municipal contracts which (*a*) are entered into beyond the express, implied or inherent powers of the local government unit; and (*b*) do not comply with the substantive requirements of law *e.g.*, when expenditure of public funds is to be made, there must be an actual appropriation and certificate of availability of funds; while to the latter belongs those which (*a*) are entered into by the improper department, board, officer of agent; and (*b*) do not comply with the formal requirements of a written contract *e.g.*, the Statute of Frauds.

4. ID.; ID.; ID.; ID.; VOID *ULTRA VIRES* ACT, COMMITTED IN CASE AT BAR.— [I]t is clear that the Subject Loans belong to the first class of *ultra vires* acts deemed as void. Records disclose that the said loans were executed by the Municipality for the purpose of funding the conversion of the Agoo Plaza into a commercial center pursuant to the Redevelopment Plan. However, the conversion of the said plaza is beyond the Municipality's jurisdiction considering the property's nature as one for public use and thereby, forming part of the public dominion. Accordingly, it cannot be the object of appropriation either by the State or by private persons. Nor can it be the subject of lease or any other contractual undertaking. x x x In this relation, Article 1409(1) of the Civil Code provides that a contract whose purpose is contrary to law, morals, good customs, public order or public policy is considered void and as such, creates no rights or obligations or any juridical relations. Consequently, given the unlawful purpose behind the Subject Loans which is to fund the commercialization of the Agoo Plaza pursuant to the Redevelopment Plan, they are considered as *ultra vires* in the primary sense thus, rendering them void and in effect, non- binding on the Municipality.

5. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; PROPERTY OF PUBLIC DOMINION; A PUBLIC LAND INTENDED FOR PUBLIC USE CANNOT BE CONVERTED INTO PATRIMONIAL PROPERTY WITHOUT THE EXPRESS GRANT BY THE NATIONAL GOVERNMENT.— [I]t is equally observed that the land on which the Agoo Plaza is situated **cannot be converted into patrimonial property** – as the SB tried to when it passed Municipal Ordinance No. 02-2007 – **absent any express grant by the national government**. As public land used for public use,

the foregoing lot rightfully belongs to and is subject to the administration and control of the Republic of the Philippines. Hence, without the said grant, the Municipality has no right to claim it as patrimonial property.

6. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIALS; CAN BE HELD PERSONALLY ACCOUNTABLE FOR ACTS CLAIMED TO HAVE BEEN PERFORMED IN CONNECTION WITH OFFICIAL DUTIES WHERE THEY HAVE ACTED *ULTRA VIRES*.— [W]hile the Subject Loans cannot bind the Municipality for being *ultra vires*, the officers who authorized the passage of the Subject Resolutions are personally liable. Case law states that public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted *ultra vires*, as in this case.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Pablo M. Olarte for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] is the March 26, 2010 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV. No. 89732 which affirmed with modification the April 10, 2007 Decision[3] of the Regional Trial Court (RTC) of Agoo, La Union, Branch 31, declaring *inter alia* the nullity of the loan agreements entered into by petitioner Land Bank of the Philippines (Land Bank) and the Municipality of Agoo, La Union (Municipality).

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[1] *Rollo*, pp. 10-37.

[2] *Id.* at 42-73. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Ramon R. Garcia and Stephen C. Cruz, concurring.

[3] *Id.* at 74-203. Penned by Executive Judge Clifton U. Ganay.

The Facts

From 2005 to 2006, the Municipality's *Sangguniang Bayan* (SB) passed certain resolutions to implement a multi-phased plan (Redevelopment Plan) to redevelop the Agoo Public Plaza (Agoo Plaza) where the Imelda Garden and Jose Rizal Monument were situated.

To finance phase 1 of the said plan, the SB initially passed Resolution No. 68-2005[4] on April 19, 2005, authorizing then Mayor Eufranio Eriguel (Mayor Eriguel) to obtain a loan from Land Bank and incidental thereto, mortgage a 2,323.75 square meter lot situated at the southeastern portion of the Agoo Plaza (Plaza Lot) as collateral. To serve as additional security, it further authorized the assignment of a portion of its internal revenue allotment (IRA) and the monthly income from the proposed project in favor of Land Bank.[5] The foregoing terms were confirmed, approved and ratified on October 4, 2005 through Resolution No. 139-2005.[6] Consequently, on November 21, 2005, Land Bank extended a ₱4,000,000.00 loan in favor of the Municipality (First Loan),[7] the proceeds of which were used to construct ten (10) kiosks at the northern and southern portions of the Imelda Garden. After completion, these kiosks were rented out.[8]

On March 7, 2006, the SB passed Resolution No. 58-2006,[9] approving the construction of a commercial center on the Plaza

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[4] *Id.* at 79-83.

[5] *Id.* at 63.

[6] *Id.* at 120-125.

[7] *Id.* at 64.

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

[9] *Id.* at 115-120. Records reveal that there are two (2) versions of Resolution No. 58-2006. While in both versions the SB approved the construction of the said commercial center, the second version further authorized Mayor Eriguel to negotiate and enter into a loan with Land Bank for the aforesaid purpose, as well as mortgage, assign, or execute any other collateral agreement to secure the payment of such loan.

Lot as part of phase II of the Redevelopment Plan. To finance the project, Mayor Eriguel was again authorized to obtain a loan from Land Bank, posting as well the same securities as that of the First Loan. All previous representations and warranties of Mayor Eriguel related to the negotiation and obtention of the new loan[10] were ratified on September 5, 2006 through Resolution No. 128-2006.[11] In consequence, Land Bank granted a second loan in favor of the Municipality on October 20, 2006 in the principal amount of ₱28,000,000.00 (Second Loan).[12]

Unlike phase 1 of the Redevelopment Plan, the construction of the commercial center at the Agoo Plaza was vehemently objected to by some residents of the Municipality. Led by respondent Eduardo Cacayuran (Cacayuran), these residents claimed that the conversion of the Agoo Plaza into a commercial center, as funded by the proceeds from the First and Second Loans (Subject Loans), were "highly irregular, violative of the law, and detrimental to public interests, and will result to wanton desecration of the said historical and public park."[13] The foregoing was embodied in a Manifesto,[14] launched through a signature campaign conducted by the residents and Cacayuran.

In addition, Cacayuran wrote a letter[15] dated December 8, 2006 addressed to Mayor Eriguel, Vice Mayor Antonio Eslao (Vice Mayor Eslao), and the members of the SB namely, Violeta Laroya-Balbin, Jaime Boado, Jr., Rogelio De Vera, James Dy, Crisogono Colubong, Ricardo Fronda, Josephus Komiya, Erwina Eriguel, Felizardo Villanueva, and Gerard Mamuyac (Implicated Officers), expressing the growing public clamor against the conversion of the Agoo Plaza into a commercial center. He then requested the foregoing officers to furnish him certified copies of various documents related to the aforementioned

[10] *Id.* at 65.

[11] *Id.* at 125-127.

[12] *Id.* at 65.

[13] *Id.* at 213-215.

[14] *Id.*

[15] *Id.* at 216-218.

conversion including, among others, the resolutions approving the Redevelopment Plan as well as the loan agreements for the sake of public information and transparency.

Unable to get any response, Cacayuran, invoking his right as a taxpayer, filed a Complaint[16] against the Implicated Officers and Land Bank, assailing, among others, the validity of the Subject Loans on the ground that the Plaza Lot used as collateral thereof is property of public dominion and therefore, beyond the commerce of man.[17]

Upon denial of the Motion to Dismiss dated December 27, 2006,[18] the Implicated Officers and Land Bank filed their respective Answers.

For its part, Land Bank claimed that it is not privy to the Implicated Officers' acts of destroying the Agoo Plaza. It further asserted that Cacayuran did not have a cause of action against it since he was not privy to any of the Subject Loans.[19]

During the pendency of the proceedings, the construction of the commercial center was completed and the said structure later became known as the Agoo's People Center (APC).

On May 8, 2007, the SB passed Municipal Ordinance No. 02-2007,[20] declaring the area where the APC stood as patrimonial property of the Municipality.

The Ruling of the RTC

In its Decision dated April 10, 2007,[21] the RTC ruled in favor of Cacayuran, declaring the nullity of the Subject Loans.[22] It found that the resolutions approving the said loans were passed

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[16] *Id.* at 205-212.

[17] *Id.* at 208.

[18] *Id.* at 49.

[19] *Id.* at 53.

[20] *Id.* at 219-220.

[21] *Id.* at 74-203.

[22] *Id.* at 199.

in a highly irregular manner and thus, *ultra vires*; as such, the Municipality is not bound by the same.[23] Moreover, it found that the Plaza Lot is proscribed from collateralization given its nature as property for public use. [24]

Aggrieved, Land Bank filed its Notice of Appeal on April 23, 2007.[25] On the other hand, the Implicated Officers' appeal was deemed abandoned and dismissed for their failure to file an appellants' brief despite due notice.[26] In this regard, only Land Bank's appeal was given due course by the CA.

Ruling of the CA

In its Decision dated March 26, 2010,[27] the CA affirmed with modification the RTC's ruling, excluding Vice Mayor Eslao from any personal liability arising from the Subject Loans.[28]

It held, among others, that: (1) Cacayuran had *locus standi* to file his complaint, considering that (*a*) he was born, raised and a *bona fide* resident of the Municipality; and (*b*) the issue at hand involved public interest of transcendental importance;[29] (2) Resolution Nos. 68-2005, 139-2005, 58-2006, 128-2006 and all other related resolutions (Subject Resolutions) were invalidly passed due to the SB's non-compliance with certain sections of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" (LGC); (3) the Plaza Lot, which served as collateral for the Subject Loans, is property of public dominion and thus, cannot be appropriated either by the State or by private persons;[30] and (4) the Subject Loans are *ultra vires* because they were transacted without proper authority

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[23] *Id.* at 148-149.

[24] *Id.* at 145-147.

[25] *Id.* at 56.

[26] *Id.* at 45.

[27] *Id.* at 42-73.

[28] *Id.* at 69.

[29] *Id.* at 62-63.

[30] *Id.* at 67.

and their collateralization constituted improper disbursement of public funds.

Dissatisfied, Land Bank filed the instant petition.

Issues Before the Court

The following issues have been raised for the Court's resolution: (1) whether Cacayuran has standing to sue; (2) whether the Subject Resolutions were validly passed; and (3) whether the Subject Loans are *ultra vires*.

The Court's Ruling

The petition lacks merit.

A. Cacayuran's standing to sue

Land Bank claims that Cacayuran did not have any standing to contest the construction of the APC as it was funded through the proceeds coming from the Subject Loans and not from public funds. Besides, Cacayuran was not even a party to any of the Subject Loans and is thus, precluded from questioning the same.

The argument is untenable.

It is hornbook principle that a taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that there is wastage of public funds through the enforcement of an invalid or unconstitutional law. A person suing as a taxpayer, however, must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation. In other words, for a taxpayer's suit to prosper, two requisites must be met namely, (1) public funds derived from taxation are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed; and (2) the petitioner is directly affected by the alleged act.[31]

Records reveal that the foregoing requisites are present in the instant case.

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[31] *Mamba v. Lara*, G.R. No. 165109, December 14, 2009, 608 SCRA 149, 162, citing *Bagatsing v. San Juan*, 329 Phil. 8, 13 (1996).

First, although the construction of the APC would be primarily sourced from the proceeds of the Subject Loans, which Land Bank insists are not taxpayer's money, there is no denying that public funds derived from taxation are bound to be expended as the Municipality assigned a portion of its IRA as a security for the foregoing loans. Needless to state, the Municipality's IRA, which serves as the local government unit's just share in the national taxes,[32] is in the nature of public funds derived from taxation. The Court believes, however, that although these funds may be posted as a security, its collateralization should only be deemed effective during the incumbency of the public officers who approved the same, else those who succeed them be effectively deprived of its use.

In any event, it is observed that the proceeds from the Subject Loans had already been converted into public funds by the Municipality's receipt thereof. Funds coming from private sources become impressed with the characteristics of public funds when they are under official custody.[33]

Accordingly, the first requisite has been clearly met.

Second, as a resident-taxpayer of the Municipality, Cacayuran is directly affected by the conversion of the Agoo Plaza which was funded by the proceeds of the Subject Loans. It is well-settled that public plazas are properties for public use[34] and therefore, belongs to the public dominion.[35] As such, it can be

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[32] Sec. 284 of the LGC provides as follows:

Sec. 284. *Allotment of Internal Revenue Taxes.* - Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows: x x x x

[33] See *People v. Aquino*, G.R. No. L-6063, April 26, 1954.

[34] *Province of Camarines Sur v. CA*, G.R. No. 175064, September 18, 2009, 600 SCRA 569, 588-589.

[35] Art. 420 of the Civil Code provides:

Art. 420. The following things are **property of public dominion**:

(1) **Those intended for public use**, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; x x x x (Emphasis supplied)

used by anybody and no one can exercise over it the rights of a private owner.[36] In this light, Cacayuran had a direct interest in ensuring that the Agoo Plaza would not be exploited for commercial purposes through the APC's construction. Moreover, Cacayuran need not be privy to the Subject Loans in order to proffer his objections thereto. In *Mamba v. Lara*, it has been held that a taxpayer need not be a party to the contract to challenge its validity; as long as taxes are involved, people have a right to question contracts entered into by the government.[37]

Therefore, as the above-stated requisites obtain in this case, Cacayuran has standing to file the instant suit.

B. Validity of the Subject Resolutions

Land Bank avers that the Subject Resolutions provided ample authority for Mayor Eriguel to contract the Subject Loans. It posits that Section 444(b)(1)(vi) of the LGC merely requires that the municipal mayor be authorized by the SB concerned and that such authorization need not be embodied in an ordinance.[38]

A careful perusal of Section 444(b)(1)(vi) of the LGC shows that while the authorization of the municipal mayor need not be in the form of an ordinance, **the obligation which the said local executive is authorized to enter into must be made pursuant to a law or ordinance**, *viz*:

Sec. 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* -

xxx x x x xxx

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[36] *Province of Camarines Sur v. CA*, *supra* note 34, at 587, citing *In the Matter of Reversion/Recall of Reconstituted Act No. 0-116 Decree No. 388, Heirs of Palaganas v. Registry of Deeds, Tarlac City*, G.R. No. 171304, October 10, 2007, 535 SCRA 476, 484.

[37] *Mamba v. Lara*, *supra* note 31, at 162, citing *Abaya v. Ebdane, Jr.*, G.R. No. 167919, February 14, 2007, 515 SCRA 720, 758.

[38] *Rollo*, p. 26.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

x x x x x x x x x

(vi) Upon authorization by the *sangguniang bayan*, represent the municipality in all its business transactions and sign on its behalf **all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance**; (Emphasis and underscoring supplied)

In the present case, while Mayor Eriguel's authorization to contract the Subject Loans was not contained – as it need not be contained – in the form of an ordinance, the said loans and even the Redevelopment Plan itself were not approved pursuant to any law or ordinance but through mere resolutions. The distinction between ordinances and resolutions is well-perceived. While ordinances are laws and possess a general and permanent character, resolutions are merely declarations of the sentiment or opinion of a lawmaking body on a specific matter and are temporary in nature.[39] As opposed to ordinances, "no rights can be conferred by and be inferred from a resolution."[40] In this accord, it cannot be denied that the SB violated Section 444(b)(1)(vi) of the LGC altogether.

Noticeably, the passage of the Subject Resolutions was also tainted with other irregularities, such as (1) the SB's failure to submit the Subject Resolutions to the *Sangguniang Panlalawigan* of La Union for its review contrary to Section 56 of the LGC;[41]

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[39] *Municipality of Parañaque v. V.M. Realty Corporation*, 354 Phil. 684, 691-695 (1998).

[40] *Spouses Yusay v. CA*, G.R. No. 156684, April 6, 2011, 647 SCRA 269, 278.

[41] Sec. 56. *Review of Component City and Municipal Ordinances or Resolutions by the Sangguniang Panlalawigan.* –

(a) Within three (3) days after approval, the secretary to the *sangguniang panlungsod* or *sangguniang bayan* shall forward to the *sangguniang panlalawigan* for review, copies of approved ordinances and the resolutions approving the local development plans and public investment programs formulated by the local development councils.

and (2) the lack of publication and posting in contravention of Section 59 of the LGC.[42]

(b) Within thirty (30) days after receipt of copies of such ordinances and resolutions, the *sangguniang panlalawigan* shall examine the documents or transmit them to the provincial attorney, or if there be none, to the provincial prosecutor for prompt examination. The provincial attorney or provincial prosecutor shall, within a period of ten (10) days from receipt of the documents, inform the *sangguniang panlalawigan* in writing of his comments or recommendations, which may be considered by the *sangguniang panlalawigan* in making its decision.

(c) If the *sangguniang panlalawigan* finds that such an ordinance or resolution is beyond the power conferred upon the *sangguniang panlungsod* or *sangguniang bayan* concerned, it shall declare such ordinance or resolution invalid in whole or in part. The *sangguniang panlalawigan* shall enter its action in the minutes and shall advise the corresponding city or municipal authorities of the action it has taken.

(d) If no action has been taken by the *sangguniang panlalawigan* within thirty (30) days after submission of such an ordinance or resolution, the same shall be presumed consistent with law and therefore val*id.*

[42] Sec. 59. *Effectivity of Ordinances or Resolutions.* –

(a) Unless otherwise stated in the ordinance or the resolution approving the local development plan and public investment program, the same shall take effect after ten (10) days from the date a copy thereof is posted in a bulletin board at the entrance of the provincial capitol or city, municipal, or *barangay* hall, as the case may be, and in at least two (2) other conspicuous places in the local government unit concerned.

(b) The secretary to the *sanggunian* concerned shall cause the posting of an ordinance or resolution in the bulletin board at the entrance of the provincial capitol and the city, municipal, or *barangay* hall in at least two (2) conspicuous places in the local government unit concerned not later than five (5) days after approval thereof.

The text of the ordinance or resolution shall be disseminated and posted in Filipino or English and in the language or dialect understood by the majority of the people in the local government unit concerned, and the secretary to the *sanggunian* shall record such fact in a book kept for the purpose, stating the dates of approval and posting.

(c) The gist of all ordinances with penal sanctions shall be published in a newspaper of general circulation within the province where the local legislative body concerned belongs. In the absence of any newspaper of general circulation within the province, posting of such ordinances shall be made in all municipalities and cities of the province where the *sanggunian* of origin is situated.

In fine, Land Bank cannot rely on the Subject Resolutions as basis to validate the Subject Loans.

C. Ultra vires nature of the Subject Loans

Neither can Land Bank claim that the Subject Loans do not constitute *ultra vires* acts of the officers who approved the same.

Generally, an *ultra vires* act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the powers conferred upon it by law.[43] There are two (2) types of *ultra vires* acts. As held in *Middletown Policemen's Benevolent Association v. Township of Middletown*:[44]

> There is a distinction between **an act utterly beyond the jurisdiction of a municipal corporation** and the **irregular exercise of a basic power under the legislative grant in matters not in themselves jurisdictional**. The former are *ultra vires* in the primary sense and **void**;the latter, *ultra vires* only in a secondary sense which **does not preclude ratification or the application of the doctrine of estoppel in the interest of equity and essential justice**. (Emphasis and underscoring supplied)

In other words, an act which is outside of the municipality's jurisdiction is considered as a void *ultra vires* act, while an act attended only by an irregularity but remains within the municipality's power is considered as an *ultra vires* act subject to ratification and/or validation. To the former belongs municipal contracts which (*a*) are entered into beyond the express, implied

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(d) In the case of highly urbanized and independent component cities, the main features of the ordinance or resolution duly enacted or adopted shall, in addition to being posted, be published once in a local newspaper of general circulation within the city: Provided, That in the absence thereof the ordinance or resolution shall be published in any newspaper of general circulation.

[43] *Republic v. Acoje Mining Company, Inc.*, G.R. No. L-18062, February 28, 1963, citing 19 C.J.S., Sec. 965, p. 419.

[44] 162 N.J. 361, 368 (2000), citing *Skulski v. Nolan*, 68 N.J. 179, 198 (1975).

or inherent powers of the local government unit; and (*b*) do not comply with the substantive requirements of law *e.g.*, when expenditure of public funds is to be made, there must be an actual appropriation and certificate of availability of funds; while to the latter belongs those which (*a*) are entered into by the improper department, board, officer of agent; and (*b*) do not comply with the formal requirements of a written contract *e.g.*, the Statute of Frauds.[45]

Applying these principles to the case at bar, it is clear that the Subject Loans belong to the first class of *ultra vires* acts deemed as void.

Records disclose that the said loans were executed by the Municipality for the purpose of funding the conversion of the Agoo Plaza into a commercial center pursuant to the Redevelopment Plan. However, the conversion of the said plaza is beyond the Municipality's jurisdiction considering the property's nature as one for public use and thereby, forming part of the public dominion. Accordingly, it cannot be the object of appropriation either by the State or by private persons.[46] Nor can it be the subject of lease or any other contractual undertaking.[47] In *Villanueva v. Castañeda, Jr.*,[48] citing *Espiritu v. Municipal Council of Pozorrubio*,[49] the Court pronounced that:

> x x x Town plazas are properties of public dominion, to be devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased by the municipality to private parties.

In this relation, Article 1409(1) of the Civil Code provides that a contract whose purpose is contrary to law, morals, good

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[45] See ANTONIO E.B. NACHURA, *Outline Reviewer in Political Law* (2009), p. 602.

[46] *Id.* at 607.

[47] 238 Phil. 136, 142.

[48] *Id.* at 144.

[49] 102 Phil. 866, 869-870 (1958).

customs, public order or public policy is considered void[50] and as such, creates no rights or obligations or any juridical relations.[51] Consequently, given the unlawful purpose behind the Subject Loans which is to fund the commercialization of the Agoo Plaza pursuant to the Redevelopment Plan, they are considered as *ultra vires* in the primary sense thus, rendering them void and in effect, non-binding on the Municipality.

At this juncture, it is equally observed that the land on which the Agoo Plaza is situated **cannot be converted into patrimonial property** – as the SB tried to when it passed Municipal Ordinance No. 02-2007[52] – **absent any express grant by the national government**.[53] As public land used for public use, the foregoing lot rightfully belongs to and is subject to the administration and control of the Republic of the Philippines.[54] Hence, without the said grant, the Municipality has no right to claim it as patrimonial property.

Nevertheless, while the Subject Loans cannot bind the Municipality for being *ultra vires*, the officers who authorized the passage of the Subject Resolutions are personally liable. Case law states that public officials can be held personally accountable for acts claimed to have been performed in

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[50] 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,

x x x x x x x x x

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived

[51] See *Nunga, Jr. v. Nunga III*, G.R. No. 178306, December 18, 2008, 574 SCRA 760, 780.

[52] *Rollo,* pp. 219-220.

[53] *Province of Camarines Sur v. CA, supra* note 34, at 588, citing *Municipality of San Carlos, Pangasinan v. Morfe*, 115 Phil. 608 (1962).

[54] *Id.*

connection with official duties where they have acted *ultra vires*,[55] as in this case.

WHEREFORE, the petition is **DENIED**. Accordingly, the March 26, 2010 Decision of the Court of Appeals in CA-G.R. CV. No. 89732 is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

[55] See *Chavez v. Sandiganbayan*, G.R. No. 91391, January 24, 1991, 193 SCRA 282, 289.

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— The act of using a foreign passport repudiates the very oath of renunciation. *(Id.)*

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COMMISSION ON ELECTIONS (COMELEC)

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— Printing of ballot images; parties may move for the printing of the ballot images even without signs of tampering. *(Id.)*

— Printing of ballot images; parties or their representatives are not required to be present therein. *(Id.)*

— Recount proceedings; the parties' presence during the printing of the images of the ballots is required. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, April 11, 2013) p. 265

— The recount proceedings authorized under Section 6, Rule 15 of COMELEC Resolution No. 8804, as amended, are to be conducted by the COMELEC Divisions only in the exercise of their exclusive original jurisdiction over all election protests involving elective regional, provincial and city officials. *(Id.)*

COMELEC Resolution No. 8804, Sec. 3, Rule 16 — "In case the parties deem it necessary, they may file a motion"; the provision really envisions a situation in which both parties have agreed that the ballot images should be printed; should only one of the parties move for the printing of the ballot images, it is not Section 3 that applies but Section 6(e), which then requires a finding that the integrity of the ballots has been compromised. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, April 11, 2013) p. 265

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DANGEROUS DRUGS ACT (R.A. NO. 6425)

Illegal possession of dangerous drugs — Possession of a dangerous drug to prosper, it must be shown that: (a) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; and (c) the accused was freely

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— Residence is a manifestation of possession and occupation. *(Id.)*

— The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession de facto and not to the possession *de jure*. *(Id.)*

— Where the basis of possession is usufructuary right, the issue of restitution of possession has been rendered moot upon the party's death. *(Id.)*

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Eligibility of candidates — All doubts regarding the candidate's eligibility should be resolved in his favor. (Casan Macode Maquiling *vs*. Commission on Elections, G.R. No. 195649, April 16, 2013; *Brion, J., dissenting opinion*) p. 408

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— The disqualification that existed prior to the filing of the certificate of candidacy voids not only the certificate of candidacy but also the proclamation. *(Id.)*

— The ineligibility of a candidate cannot be cured by the number of ballots cast in his favor. *(Id.)*

— The votes for the ineligible candidate shall be disregarded and the next-in-rank who does not possess any of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates shall become the winner. *(Id.)*

Over-voting — Over-voting itself cannot be the proof of ballot tampering. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, April 11, 2013; *Perez, J., concurring opinion*) p. 265

— The vote shall be considered stray and will not be credited to any of the contending parties. *(Id.)*

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— The filing of a complaint for illegal dismissal is inconsistent with resignation or abandonment. *(Id.)*

Procedural due process — Non-compliance with the procedural due process should not render the dismissal illegal. (Mendoza *vs*. HMS Credit Corp. and/or Felipe R. Diego, G.R. No. 187232, April 17, 2013) p. 756

— Procedure consists of: (a) a first written notice stating the intended grounds for termination; (b) a hearing or conference where the employee is given the opportunity to explain his side; and (c) a second written notice informing the employee of his termination and the grounds therefor. *(Id.)*

ESTOPPEL

Doctrine of — A party is estopped from questioning an already final and partially executed decision of the court. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Velasco, Jr., J., dissenting opinion*) p. 7

Doctrine of estoppel by laches — Laches is not concerned with mere lapse of time; the fact of delay, standing alone, is insufficient to constitute laches. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Brion, J., separate concurring opinion*) p. 7

EVIDENCE

Burden of proof — The burden of proof is vested upon the party who alleges the truth of his claim or defense or any fact in issue; where a party resorts to bare denials and allegations and fails to submit evidence in support of his defense, the determination that he committed the violation is sustained. (Tenoso *vs*. Atty. Anselmo S. Echanez, A.C. No. 8384, April 11, 2013) p. 1

Chain of custody — Failure of police officers to mark the items seized from an accused in illegal drugs cases immediately upon its confiscation at the place of arrest does not automatically impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence. (People of the Phils. *vs*. Dumalag, G.R. No. 180514, April 17, 2013) p. 598

— Prosecution must prove each and every link of the chain of custody of the sachets of shabu from the time they were seized from accused-appellant, kept in police custody then transferred to the laboratory for examination, and up to their presentation in court. *(Id.)*

— The integrity and evidentiary value of the items seized from the accused are preserved despite failure of the apprehending officers to make inventory and photograph

the same. (People of the Phils. *vs*. Aguilar *y* Manzanillo, G.R. No. 191396, April 17, 2013) p. 799

Dead man's statute rule — If one party to the alleged transaction is precluded from testifying by death, insanity, or other mental disabilities, the other party is not entitled to the undue advantage of giving his own uncontradicted and unexplained account of the transaction. (Garcia *vs*. Robles *vda. de* Caparas, G.R. No. 180843, April 17, 2013) p. 619

Judicial notice — The court may take judicial notice of records of a prior case in the resolution of the case pending before it. (Sps. Chingkoe *vs*. Sps. Chingkoe, G.R. No. 185518, April 17, 2013) p. 696

Proof of — Disparity in physical strength between the victim and accused is dispensable. (People of the Phils. *vs*. Deligero *y* Bacasmot, G.R. No. 189280, April 17, 2013) p. 78

EXPROPRIATION

Nature — Presentation of an evidence of ownership of the land in an expropriation case does not constitute collateral attack on the title. (Rep. of the Phils. *vs*. Hon. Rosa Samson-Tatad, G.R. No. 187677, April 17, 2013) p. 771

— State's inherent power that need not be granted even by the Constitution, and as the government's right to appropriate, in the nature of compulsory sale to the State, private property for public use or purpose. *(Id.)*

— The issue of ownership of the land sought to be expropriated may be resolved in an expropriation case only for the sole purpose of determining who is entitled to just compensation. *(Id.)*

FORUM SHOPPING

Existence of — A party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated. (Sps. Silverio, Sr. and *vs*. Sps. Marcelo, G.R. No. 184079, April 17, 2013) p. 662

— Established when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. (Encina *vs*. PO1 Alfredo P. Agustin, Jr., G.R. No. 187317, April 11, 2013) p. 236

— If the parties entered into separate contracts involving two distinct houses both located in a parcel of land, filing of separate cases does not constitute forum-shopping. (Sps. Silverio, Sr. *vs*. Sps. Marcelo, G.R. No. 184079, April 17, 2013; *Sereno, C.J., concurring and dissenting opinion*) p. 662

— The following elements must be present: (a) identity of parties or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. *(Id.)*

Identity of causes of action — Three tests to verify whether there is identity of causes of action for purposes of applying the principle of *res judicata*, elucidated. (Sps. Silverio, Sr. *vs*. Sps. Marcelo, G.R. No. 184079, April 17, 2013) p. 662

FRAME-UP

Defense of — In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence. (People of the Phils. *vs.* Dumalag, G.R. No. 180514, April 17, 2013) p. 598

HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET)

Powers — The power of the House of Representatives Electoral Tribunal (HRET) to examine the conditions of the ballot boxes and their contents, upheld. (Vinzons-Chato *vs.* House of Representatives Electoral Tribunal, G.R. No. 204637, April 16, 2013) p. 548

— Where HRET has disposed of an electoral protest based on existing evidence and records, it cannot be said that it acted with grave abuse of discretion. *(Id.)*

IMMIGRATION AND NATURALIZATION ACT

Renunciation of United States citizenship — Requirement; elucidated. (Casan Macode Maquiling *vs*. Commission on Elections, G.R. No. 195649, April 16, 2013; *Abad, J., separate and concurring opinion*) p. 408

INJUNCTION

Preliminary injunction — Proper when a clear legal right has been established. (Special Audit Team, COA *vs*. CA, G.R. No. 174788, April 11, 2014) p. 167

INSTIGATION

Defense of — Defense of instigation is contradictory to the defense of denial and frame-up. (People of the Phils. *vs*. Aguilar *y* Manzanillo, G.R. No. 191396, April 17, 2013) p. 799

— Not established when there was no showing that the informant employed any act of inducement to the accused. *(Id.)*

INTEGRATED BAR OF THE PHILIPPINES (IBP)

Election of the Executive Vice-President (EVP) — One who has served as president of the IBP may not run for election as EVP-IBP in a succeeding election until after the rotation of the presidency among the nine regions shall have been completed. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013) p. 7

— Rotation by exclusion; rotation rule should be applied in harmony with, and not in derogation of the sovereign will of the electorate as expressed through the ballot. *(Id.)*

— Rotation cycle rule pertains in particular to the position of IBP-EVP, not to the position of the IBP presidency. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Velasco, Jr., J., dissenting opinion*) p. 7

— Rotational rule, elucidated. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013) p. 7

— Rotational rule; the second rotational cycle already started with the election of the new executive Vice-President (EVP) who succeeded the removed EVP. *(Id.)*

— The 2011-2013 Executive Vice-President election should be open to all regions by considering the present term of Eastern Mindanao as the competition of the rotation that started in the 1989-1991 term. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Brion, J., separate concurring opinion*) p. 7

— The IBP top leadership structure provides for a two-year stint for the EVP and another two years for the National President. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Velasco, Jr., J., dissenting opinion*) p. 7

— The new rule on rotation must be applied and implemented without any reservations or qualifications. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Brion, J., separate concurring opinion*) p. 7

— The resolution of the Court did not overturn the ruling in Velez but merely directed the election of the next EVP, without any reference to any rotational cycle. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013) p. 7

— The rotation rule should be considered from the prism of the presidency and not executive vice-president. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Brion, J., separate concurring opinion*) p. 7

— The ruling of the Court in the Velez case that the service of the EVP representing the Eastern Mindanao Region completed the first rotational cycle, not overturned or vacated. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013) p. 7

— To be considered a complete turn at the IBP Leadership, one must first be elected as EVP for the current term before he or she can serve as national president for the next term. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; V*elasco, Jr., J., dissenting opinion*) p. 7

IBP Committees — Court recommends to create a committee for IBP affairs to primarily attend to the problems and needs of a very important professional body and to make recommendation for its improvement and strengthening. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013) p. 7

— Proposal of creation of a permanent IBP committee in the Supreme Court to handle the affairs of the IBP. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Brion, J., separate concurring opinion*) p. 7

IBP President — In case of vacancy in the position of the IBP President, the person who shall act as acting president would only serve during the remainder of the term. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Velasco, Jr., J., dissenting opinion*) p. 7

Supreme Court supervision — Court's issuances pertaining to its regulatory supervision over the IBP does not become final and immutable as ordinary cases, as it is always subject to continuing review by the Court. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Brion, J., separate concurring opinion*) p. 7

INTERVENTION

Nature — Absent legal interest in the subject matter of the litigation, the proposed intervention has no leg to stand on and is patently devoid of merit. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Velasco, Jr., J., dissenting opinion*) p. 7

— No justification to relax the procedural rules on intervention, case at bar. *(Id.)*

— The aim of the rule on intervention is to facilitate a comprehensive adjudication of rival claims overriding technicalities on the timeliness of the filing thereof. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Brion, J., separate concurring opinion*) p. 7

JUDGMENTS

Immutability of final judgments — Court's issuances on administrative matters pursuant to its exercise of its regulatory supervision over the IBP does not become final and immutable as in ordinary adjudicated cases always subject to continuing review by the Court, guided by the dictates of the Constitution, laws and regulations, as well as by policies the Court deem necessary, practicable, wise, and appropriate in light of prevailing circumstances. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Brion, J., separate concurring opinion*) p. 7

— Does not apply to the court's exercise of supervisory powers over the Integrated Bar of the Philippines. *(Id.)*

— Once a judgment becomes final, it may not be modified in any respect even if the modification is meant to correct what is perceived to be erroneous conclusions of law and fact. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Velasco, Jr., J., dissenting opinion*) p. 7

— The doctrine admits of several exceptions, to wit: (1) correction of clerical errors; (2) nunc pro tunc entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision which render its execution unjust and inequitable. *(Id.)*

JUDICIAL AND BAR COUNCIL (JBC)

Composition of — A Senator and a Member of the House of Representatives should sit in the Judicial and Bar Council so that Congress can be fully represented. (Chavez *vs*. Judicial and Bar Council, G.R. No. 202242, April 16, 2013; *Leonen, J., dissenting opinion*) p. 478

— Congress is entitled to only one (1) seat in the JBC. (Chavez *vs*. Judicial and Bar Council, G.R. No. 202242, April 16, 2013) p. 478

— Either a Senator or a member of the House of Representatives is constitutionally empowered to represent the entire Congress; he is entitled to one full vote. *(Id.)*

— Reason for Congress' limited participation in the JBC, elucidated. *(Id.)*

— The Senate and the House of Representatives should have one representative each in the JBC. (Chavez *vs*. Judicial and Bar Council, G.R. No. 202242, April 16, 2013; *Abad, J., dissenting opinion*) p. 478

JUDICIAL DEPARTMENT

Supreme Court — The Supreme Court wields a continuing power of supervision over the Integrated Bar of the Philippines and its affairs like the elections of its officers. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013) p. 7

JUDICIAL REVIEW

Citizens' suit — A citizen who raises a constitutional question may only do so if he could show: (1) that he had personally suffered some actual or threatened injury; (2) that the actual or threatened injury was a result of an allegedly illegal conduct of the government; (3) that the injury is traceable to the challenged action; and (4) that the injury is likely to be redressed by a favorable action. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Leonen, J., concurring opinion*) p. 189

— Any citizen is allowed to bring the suit to vindicate the public's right. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Sereno, C.J., concurring opinion*) p. 189

Legal standing/Locus standi — Defined as a right of appearance in a court of justice on a given question. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Leonen, J., concurring opinion*) p. 189

— Instances of statutory standing; enumerated. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Sereno, C.J., concurring opinion*) p. 189

— Organizational or associational standing does not require an association to suffer injury in fact. *(Id.)*

Public action — A public action is a suit brought to vindicate a right belonging to the public; based on present jurisprudence, except in cases involving issues of transcendental importance, it can only be brought by the proper representative of the public – one who has standing; injury in fact and injury in law, distinguished; Injury in fact means damage that is distinct from those suffered by the public; this is different from legal injury or injury in law, which results from a violation of a right belonging to a person. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Sereno, C.J., concurring opinion*) p. 189

Taxpayer's suit — For a taxpayer's suit to prosper, two requisites must be met namely: (1) public funds derived from taxation are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed; and (2) the petitioner is directly affected by the alleged act. (Land Bank of the Phils. *vs*. Cacayuran, G.R. No. 191667, April 17, 2013) p. 819

LABOR STANDARDS

Wages — The term benefits mentioned in the non-diminution rule refers to monetary benefits or privileges given to the employee with monetary equivalents. (Royal Plant Workers Union *vs*. Coca-Cola Bottlers Phil., Inc.-Cebu Plant, G.R. No. 198783, April 15, 2013) p. 350

LAND REGISTRATION

Torrens certificate of title —The defense of indefeasibility of a torrens title does not extend to transferees who take the certificate of title in bad faith. (Sps. Vallido *vs*. Sps. Pono, G.R. No. 200173, April 15, 2013) p. 371

LOCAL GOVERNMENT

Autonomous regions — Autonomous regions are granted more powers and less intervention from the national government than territorial and political subdivisions. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Leonen, J., concurring opinion*) p. 189

— The Constitution also provides for a plebiscite requirement before the organic act that creates an autonomous region becomes effective. *(Id.)*

Local autonomy — In granting autonomy, the national government does not totally relinquish its powers; the grant of autonomy does not make territorial and political subdivisions sovereign within the state or an *imperium in imperio*. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Leonen, J., concurring opinion*) p. 189

— Refers to the administrative autonomy of local government units. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013) p. 189

Local governance — Two types of local governance other than the national government: 1) the territorial and political subdivisions composed of provinces, cities, municipalities and barangays; and 2) autonomous regions. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Leonen, J., concurring o*pinion) p. 189

Territorial and political subdivisions — The creation of territorial and political subdivisions is subject to the Local Government Code enacted by the Congress without a plebiscite requirement. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Leonen, J., concurring opinion*) p. 189

LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160)

Chief executives — The obligation which the said local executive is authorized to enter into must be made pursuant to a law or ordinance; ordinances are laws and possess a general and permanent character, resolutions are merely declarations of the sentiment or opinion of a lawmaking body on a specific matter and are temporary in nature. (Land Bank of the Phils. *vs*. Cacayuran, G.R. No. 191667, April 17, 2013) p. 819

Constitutionality of — The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013) p. 189

League of provinces — The league of provinces is also vested with statutory standing. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Sereno, C.J., concurring opinion*) p. 189

Municipal corporations — Conversion of plaza is beyond the municipality's jurisdiction considering the property's nature as one for public use and thereby, forming part of the public dominion. (Land Bank of the Phils. *vs*. Cacayuran, G.R. No. 191667, April 17, 2013) p. 819

— Ultra vires acts; committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the powers conferred upon it by law; two types of ultra vires acts are: an act which is outside of the municipality's jurisdiction is considered as a void ultra vires act, while an act attended only by an irregularity but remains within the municipality's power is considered as an ultra vires act subject to ratification and/or validation. *(Id.)*

Small-scale mining — The Local Government Code did not fully devolve the enforcement of the small-scale mining law to the provincial government, as its enforcement is

subject to the supervision, control and review of the Department of Environment and Natural Resources. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013) p. 189

LOCAL GOVERNMENT UNITS

Ordinance — An enabling ordinance is necessary to confer the permits issued by the LGU with validity. (Ruzol *vs*. Sandiganbayan, G.R. Nos. 186739-960, April 17, 2013) p. 708

Powers — Local government unit is also empowered to monitor and regulate salvaged forest products; this is a shared responsibility which may be done either by the DENR or the LGU or both. (Ruzol *vs*. Sandiganbayan, G.R. Nos. 186739-960, April 17, 2013) p. 708

— Permit to transport salvaged forest products is not a manifestation of usurpation of DENR's authority but rather an additional measure which was meant to complement DENR's duty to regulate and monitor forest resources within the LGU's territorial jurisdiction. *(Id.)*

MINING ACT (R.A. NO. 7492)

Quarry permits — When issued. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Leonen, J., concurring opinion*) p. 189

MOTION FOR RECONSIDERATION

Application — Issues raised for the first time in a motion for reconsideration before the Supreme Court are deemed waived. (Paglaum Mgm't.& Dev't. Corp. *vs*. Union Bank of the Phils., G.R. No. 179018, April 17, 2013) p. 595

— New issues that require a factual determination that is not within the province of the Supreme Court. *(Id.)*

NATIONAL ECONOMY AND PATRIMONY

Use of natural resources — The Department of Environment and Natural Resources is in charge with the State's constitutional mandate to control and supervise the exploration, development, utilization and conservation of the country's natural resources. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013) p. 189

OBLIGATIONS, EXTINGUISHMENT OF

Consignation — A case for consignation is made out if the allegations of the complaint present a situation where the creditor is unknown or that two or more entities appear to possess the same right to collect. (Sps. Cacayorin *vs*. Armed Forces and Police Mutual Benefit Association, Inc., G.R. No. 171298, April 15, 2013) p. 307

— As distinguished from tender of payment: tender is the antecedent of consignation, that is, an act preparatory to the consignation, which is the principal, and from which are derived the immediate consequences which the debtor desires or seeks to obtain. *(Id.)*

— Necessarily judicial, as the Civil Code itself provides that consignation shall be made by depositing the thing or things due at the disposal of the judicial authority. *(Id.)*

PARTIES TO CIVIL ACTIONS

Class suits — Common or general interest is a requirement therein, but not in public actions. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Sereno, C.J., concurring opinion*) p. 189

PEOPLE'S SMALL SCALE MINING ACT OF 1991 (R.A. NO. 7076)

Application — Grants the Department of Environment and Natural Resources Secretary quasi-judicial functions to the extent necessary in settling disputes over conflicting

claims. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013) p. 189

PLEADINGS

Complaint — The allegations of the complaint determine the nature of the action and the jurisdiction of the courts. (Sps. Cacayorin *vs.* Armed Forces and Police Mutual Benefit Association, Inc., G.R. No. 171298, April 15, 2013) p. 307

PROHIBITION

Petition for — Can only be aimed at judicial, quasi-judicial and ministerial functions. (Special Audit Team, COA *vs*. CA, G.R. No. 174788, April 11, 2014) p. 167

— Questions of fact cannot be decided therein; there is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts; questions of fact require evidentiary processes, the calibration of the evidence, the credibility of the witnesses, the existence and the relevance of surrounding circumstances, and the probability of specific situations. *(Id.)*

PROPERTY

Properties of public dominion — A public land intended for public use cannot be converted into patrimonial property without the express grant by the National Government. (Land Bank of the Phils. *vs*. Cacayuran, G.R. No. 191667, April 17, 2013) p. 819

PUBLIC LANDS

Classification of — Public lands not shown to have been reclassified or released as alienable agricultural land, or alienated to a private person by the State, remain part of the inalienable public domain. (Sps. Silverio, Sr. *vs*. Sps. Marcelo, G.R. No. 184079, April 17, 2013; *Sereno, C.J., concurring and dissenting opinion*) p. 662

PUBLIC OFFICIALS AND EMPLOYEES

Accountability of — Public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted ultra vires. (Land Bank of the Phils. *vs*. Cacayuran, G.R. No. 191667, April 17, 2013) p. 819

Misconduct and conduct prejudicial to the best interest of the service — The act of demanding money in exchange for their non-reassignment constitutes misconduct and conduct prejudicial to the best interest of the service. (Encina *vs*. PO1 Agustin, Jr., G.R. No. 187317, April 11, 2013) p. 236

QUALIFYING CIRCUMSTANCES

Minority — Age of the victim cannot be proven by an unauthenticated copy of the baptismal certificate. (People of the Phils. *vs*. Deligero *y* Bacasmot, G.R. No. 189280, April 17, 2013) p. 783

Relationship — Grand uncle is a relative within the fourth civil degree and is not a qualifying circumstance. (People of the Phils. *vs*. Deligero *y* Bacasmot, G.R. No. 189280, April 17, 2013) p.783

QUO WARRANTO

Petition for — A petition for *quo warranto* is a proceeding to determine the right of a person to use or exercise a franchise or an office and to oust the holder from the enjoyment, thereof, if the claim is not well-founded, or if his right to enjoy the privilege has been forfeited. (De Castro *vs*. Carlos, G.R. No. 194994, April 16, 2013) p. 389

RAPE

Commission of — Moral ascendancy takes the place of violence or intimidation. (People of the Phils. *vs.* Deligero *y* Bacasmot, G.R. No. 189280, April 17, 2013) p. 783

— Presence or absence of injury or laceration in the genitalia of the victim is not decisive of whether rape has been committed or not. *(Id.)*

Sweetheart defense — Must be convincingly established by the accused. (People of the Phils. *vs*. Deligero *y* Bacasmot, G.R. No. 189280, April 17, 2013) p. 783

RECONVEYANCE

Action for — To warrant reconveyance of the land, the plaintiff must allege and prove, among others, ownership of the land in dispute and the defendant's erroneous, fraudulent or wrongful registration of the property. (Chu, Jr. *vs*. Caparas, G.R. No. 175428, April 15, 2013) p. 319

RES JUDICATA

Doctrine of — Applies only to judicial or quasi-judicial proceedings. (Encina *vs*. PO1 Alfredo P. Agustin, Jr., G.R. No. 187317, April 11, 2013) p. 236

— Exists when as between the action sought to be dismissed and the other action these elements are present, namely; (1) the former judgment must be final; (2) the former judgment must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) the former judgment must be a judgment on the merits; and (4) there must be between the first and subsequent actions (i) identity of parties or at least such as representing the same interest in both actions; (ii) identity of subject matter, or of the rights asserted and relief prayed for, the relief being founded on the same facts; and (iii) identity of causes of action in both actions such that any judgment that may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. *(Id.)*

— Judgment on the merits means, when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections. *(Id.)*

— Means a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. *(Id.)*

— Not applicable if the case did not attain finality. (Aquino *vs*. Philippine Ports Authority, G.R. No. 181973, April 17, 2013) p. 636

SALARY STANDARDIZATION LAW (R.A. NO. 6758)

Constitutionality — The denial of the 40% RATA from the second category of officials of the Philippine Ports Authority does not violate the equal protection clause of the Constitution. (Aquino *vs*. Philippine Ports Authority, G.R. No. 181973, April 17, 2013) p. 636

SALES

Double sales — Burden of proving good faith lies with the second buyer which is not discharged by simply invoking the ordinary presumption of good faith. (Sps. Vallido *vs*. Sps. Pono, G.R. No. 200173, April 15, 2013) p. 371

— Ownership should vest in the respondents because they were first in possession of the property in good faith. *(Id.)*

— Registration of a later sale must be done in good faith to entitle the registrant to priority in ownership over the vendee in an earlier sale. *(Id.)*

— The second buyer who has actual or constructive knowledge of the prior sale cannot be a registrant in good faith. *(Id.)*

— Where the vendor is not in possession of the property, the prospective vendees are obligated to investigate the rights of one in possession. (Sps. Esmeraldo and Arsenia M. Vallido *vs*. Sps. Elmer and Juliet Pono, G.R. No. 200173, April 15, 2013) p. 371

Purchaser in good faith — To be deemed a purchaser in good faith, there must be absence of notice that some other person has a right to or interest in such property. (Chu, Jr. *vs*. Caparas, G.R. No. 175428, April 15, 2013) p. 319

SMALL-SCALE MINING ACT (R.A. NO. 7076)

Small-scale mining permits — Should cover areas declared and set aside as small-scale mining areas. (League of Provinces of the Phils. *vs*. Department of Environment and Natural Resources, G.R. No. 175368, April 11, 2013; *Leonen, J., concurring opinion*) p. 189

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Principle of — Applied. (Aquino *vs*. Philippine Ports Authority, G.R. No. 181973, April 17, 2013) p. 636

STATUTES

Casus omissus — A case omitted is to be held as intentionally omitted; Court cannot supply what it thinks the legislature would have supplied had its attention been called to the omission, as that would be judicial legislation. (Chavez *vs.* Judicial and Bar Council, G.R. No. 202242, April 16, 2013) p. 478

Doctrine of operative facts — Actions previous to the declaration of unconstitutionality are legally recognized. (Chavez *vs*. Judicial and Bar Council, G.R. No. 202242, April 16, 2013) p. 478

SUPREME COURT

Internal Rules — Section 4, Rule 12 of the Internal Rules of the Supreme Court allows a member of this Court to leave his or her vote in writing. (Mayor Maliksi *vs*. Commission on Elections, G.R. No. 203302, April 11, 2013; *Carpio, J., dissenting opinion*) p. 265

Powers — Supreme Court has the sole power to oversee the judges' and court personnel's administrative compliance with all laws, rules and regulations; exception. (CSC *vs*. Ramoneda-Pita, A.M. No. P-08-2531 [Formerly A.M. No. 08-7-220-MTCC], April 11, 2013) p. 153

— The exercise of the Court's supervisory power over the IBP and its members is exercised either through the Court's rule-making authority or through its adjudicatory or judicial

power; the Court's rule-making power is dynamic in the sense that the Court may change the rules concerning the IBP as it deems best, necessary, practical and appropriate under the circumstances; decisions arising from the Court's adjudicatory or judicial power cannot be easily changed as they involve a resolution of the contending rights of parties, which policy dictates should attain finality and, at some point, must reach an end. (In The Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, A.M. No. 09-5-2-SC, April 11, 2013; *Velasco, Jr., J., dissenting opinion*) p. 7

— The mitigation of the sanction imposed or grant of clemency by the court does not mean that the court is changing its decision finding the bar member liable, rather it is an act of liberality and generosity on the part of the court. *(Id.)*

TRUSTS

Trustor-trustee relationship — There is no trust created when the property owned by one party is separate and distinct from that which has been registered in another's name. (Chu, Jr. *vs*. Caparas, G.R. No. 175428, April 15, 2013) p. 319

UNLAWFUL DETAINER

Complaint for — A complaint for unlawful detainer may be filed by a co-owner without the necessity of joining all the other co-owners as co-plaintiffs. (Castigador Catedrilla *vs*. Mario and Margie Lauron, G.R. No. 179011, April 15, 2013) p. 335

— Although the issue in unlawful detainer cases is physical possession over a property, trial courts may provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession. (Sps. Chingkoe *vs*. Sps. Chingkoe, G.R. No. 185518, April 17, 2013) p. 696

— In an action for unlawful detainer, the real party-in-interest as party-defendant is the person who is in possession of the property without the benefit of any contract of lease

and only upon the tolerance and generosity of its owner. (Castigador Catedrilla *vs*. Mario and Margie Lauron, G.R. No. 179011, April 15, 2013) p. 335

— Parties who have established their dwelling on the subject lot for a long period have a better right to possess the same than mere holders of a tax declaration. (Sps. Silverio, Sr. *vs*. Sps. Marcelo, G.R. No. 184079, April 17, 2013) p. 662

— Subsequent acquisition of ownership is not a supervening event that will bar the execution of the judgment in an unlawful detainer case. (Holy Trinity Realty Dev't. Corp. *vs*. Sps. Abacan, G.R. No. 183858, April 17, 2013) p. 653

— The only issue is possession de facto or physical or material possession, and not possession de jure. (Sps. Silverio, Sr. *vs*. Sps. Marcelo, G.R. No. 184079, April 17, 2013; *Sereno, C.J., concurring and dissenting opinion*) p. 662

— Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. (Sps. Silverio, Sr. *vs*. Sps. Marcelo, G.R. No. 184079, April 17, 2013) p. 662

— Where the plaintiff allows the defendant to use his/her property by tolerance without any contract, the defendant is necessarily bound by an implied promise that he/she will vacate on demand, failing which, an action for unlawful detainer will lie. (Manila Electric Co. *vs*. Heirs of Sps. Dionisio Deloy and Praxedes Martonito, G.R. No. 192893, June 05, 2013)

USURPATION OF OFFICIAL FUNCTION

Commission of — A municipal mayor who issued invalid permits to transport salvaged forest products may not be held guilty of usurpation of official function if such issuance was made in good faith. (Ruzol *vs*. Sandiganbayan, G.R. Nos. 186739-960, April 17, 2013) p. 708

WITNESSES

Credibility of — Dismissal from service does not suffice to discredit a witness. (Encina *vs*. PO1 Alfredo P. Agustin, Jr., G.R. No. 187317, April 11, 2013) p. 236

— Factual findings of the trial court, especially when affirmed by the Court of Appeals are entitled to great weight and respect since the trial court was in the best position as the original trier of the facts in whose direct presence and under whose keen observation the witnesses rendered their respective versions. (People of the Phils. *vs*. Deligero *y* Bacasmot, G.R. No. 189280, April 17, 2013) p. 783

(People of the Phils. *vs*. Dumalag, G.R. No. 180514, April 17, 2013) p. 598

Presentation of witness — Non-presentation by the prosecution of the informant in illegal drugs cases is not essential for conviction. (People of the Phils. *vs*. Dumalag, G.R. No. 180514, April 17, 2013) p. 598

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