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REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 4, 2014 TO FEBRUARY 17, 2014

SUPREME COURT
MANILA
2015

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. P-13-3126. February 4, 2014]
(Formerly A.M. OCA IPI No. 09-3273-P)

VERONICA F. GALINDEZ, *complainant, vs.* **ZOSIMA SUSBILLA-DE VERA,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; A STENOGRAPHER WHO FRAUDULENTLY MISREPRESENTED HER ABILITY TO FACILITATE A LEGAL PROCEEDING IN EXCHANGE FOR MONEY IS GUILTY OF GRAVE MISCONDUCT WARRANTING THE PENALTY OF DISMISSAL FROM THE SERVICE.— To deserve the trust and confidence of the people, Susbilla-De Vera was expected to have her dealings with the public to be always sincere and above board. She should not lead others to believe that despite her status as a minor court employee she had the capacity to influence the outcomes of judicial matters. Her acts and actuations did not live up to the expectation, for the records unquestionably showed how she had deliberately and fraudulently misrepresented her ability to assist the complainant in the adoption of her niece and nephew. For one, if there would be such a case, she could not make such assurance to the complainant because the handling court would independently and objectively handle and decide the case based on its merits.

She was also aware that her representations to the complainant about no other adoption petition being yet filed in the Family Court, and about her working together with a lawyer to advance the legal matter for the complainant were both false, for there had already been another petition for adoption initiated by the complainant's own brother, and there had been no lawyer working with her to assist the complainant. Section 2, Canon 1 of the *Code of Conduct for Court Personnel* has enjoined all court personnel from soliciting or accepting "any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions." Susbilla-De Vera thus violated her sacred oath as a court employee to serve the Judiciary with utmost loyalty and to preserve the integrity and reputation of the Judiciary as an institution dispensing justice to all. Her violation was made worse by her committing it in exchange for easy money. She was thereby guilty of corruption. She compounded her guilt by disobeying the orders of the Court requiring her to explain herself. Under the circumstances, she committed grave misconduct, which the Court has described in *Velasco v. Baterbonia* as follows: In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest. **Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, contrary to the rights of others**. x x x Grave misconduct is punishable by the ultimate penalty of dismissal from the service.

D E C I S I O N

***PER CURIAM*:**

A court stenographer who defrauded a litigant by soliciting money to supposedly facilitate a legal proceeding in the court is guilty of the most serious administrative offense of grave misconduct. Her dismissal from the service is fully warranted.

Antecedents

This administrative case stemmed from the complaint-affidavit dated October 12, 2009 filed by Veronica F. Galindez (Galindez) against Court Stenographer Zosima Susbilla-De Vera (Susbilla-De Vera) of the Regional Trial Court, Branch 72, in Olongapo City.

In her complaint-affidavit,[1] Galindez averred that sometime in July 2008, she had approached Susbilla-De Vera, her school batchmate and a court employee, to inquire where any petition for the adoption of her nephew and niece had already been filed, pending, or approved by the Family Court, as she was interested in filing such a petition herself; that after several follow-ups, Susbilla-De Vera had reported to her that she could not locate any adoption petition involving the intended adoptees in the Family Court; that Susbilla-De Vera had then volunteered that she could handle the adoption process for her by coordinating with a lawyer, and that she could help in the fast-tracking of the petition; that Susbilla-De Vera had even boasted that it would take only three months for the entire process, and that there would be no need to follow up or to hire a lawyer to handle the petition; that Susbilla-De Vera had told her that the cost for the adoption process would be ₱130,000.00, half of which should be paid as down payment; that Susbilla-De Vera had followed up with her on the proposal; that because she could raise only ₱20,000.00 as down payment, Susbilla-De Vera had told her that the ₱20,000.00 would be acceptable, and that she would just talk to a certain "Atty. Nini," the handling lawyer; that she had paid the ₱20,000.00 to Susbilla-De Vera; that after a week, Susbilla-De Vera had called her to ask for the balance of the down payment; that she had willingly given the balance on two separate occasions, the first the amount of ₱30,000.00 and the second the amount of ₱15,000.00 a week later; that Susbilla-De Vera had handed her a receipt for the full amount of ₱65,000.00, with the assurance that everything would be handled well, and she had made follow-ups on the progress of

[1] *Rollo,* pp. 1-3.

the adoption proceedings, and Susbilla-De Vera had informed her that publication had already been done but that there would be other papers that needed to be located; that because of her refusal to divulge the name of the lawyer she had visited Susbilla-De Vera's office to ask the latter to facilitate a meeting with the engaged counsel; that Susbilla- De Vera had instead brought her to the Family Court (Branch 73) to look into the logbook to find out if the previous adoption had been in fact completely processed; that by the actuations of Susbilla-De Vera had given her cause to doubt, and she had then gone to the Farinas Law Office herself to inquire on the status of the adoption petition; that the legal secretary of the law office had told her that the adoption had already been completed with her brother as the petitioner; that because of that information, she had demanded from Susbilla-De Vera to return the money but Susbilla-De Vera had replied that the money had been delivered to the lawyer; that she had offered to personally see the lawyer about the return of the down payment, but Susbilla-De Vera had insisted to do it herself; that after a few days, Susbilla-De Vera had informed her that the lawyer would be returning the money in two installments; and that she had not received any reimbursement by Susbilla-De Vera as of the filing of the complaint-affdiavit.[2]

On October 26, 2009, acting on the administrative complaint, the Office of the Court Administrator (OCA) directed Susbilla-De Vera to submit her comment within ten days from receipt.[3]

When the OCA did not receive her comment thereafter, it sent another directive dated January 22, 2010 to Susbilla-De Vera for her to comply with the previous order to submit her comment.[4]

Upon the recommendation of Court Administrator Jose Midas P. Marquez, the Court directed Susbilla-De Vera to submit

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[2] *Id*. at 1-3.

[3] *Id*. at 9.

[4] *Id*. at 10.

her comment within five days with a warning that the Court would decide the administrative complaint on the basis of the record; and to show cause within ten days why she should not be held administratively liable for not complying with the two directives from the OCA.[5]

But Susbilla-De Vera still did not comply with the order for her to submit her comment. Hence, the Court deemed the case submitted for decision based on the records on file; and referred it to the OCA for evaluation, report, and recommendation.[6]

Findings and Recommendations of the OCA

In the memorandum dated September 12, 2011,[7] the OCA rendered its findings, and recommended dismissal from the service as the disciplinary action to be taken against Susbilla-De Vera, to wit:

xxx x x x xxx

Section 2 of the Code of Conduct for Court Personnel provides that "court personnel shall not solicit or accept any gift, favor or benefit on any or explicit or implicit understanding that such gift, favor or benefit shall influence their official functions" while Section 1 thereof provides that "court personnel shall not use their official position to secure unwarranted benefits, privileges or exemptions for themselves or for others."

In the case at bar, respondent violated these provisions as she took advantage of her official position in receiving the amount of ₱65,000.00 from Complainant for the alleged hiring of a counsel in the filing of a petition for adoption which did not materialize as the minors to be adopted were already the subject in a decided adoption case and, thus, committed grave misconduct. Moreover, she manifested her defiance with the directives of the OCA.

xxx x x x xxx

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[5] *Id*. at 14.

[6] *Id*. at 16.

[7] *Id*. at 19-20.

Grave Misconduct is punishable by dismissal from the service for the first offense with disqualification from employment in any government office and forfeiture of benefits, except for accrued leaves under Sec. 52 (A) (3) of the Revised Uniform Rules on Administrative Cases in the Civil Service and Rule XIV, Section 22 of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, as amended by Section 52(A), paragraphs 1 and 3 of Civil S(s)ervice Commission Memorandum Circular No. 19, Series of 1999.

x x x x x x x x x

In view of the foregoing, it is respectfully recommended, for approval of this Honorable Court, that:

x x x x x x x x x

2. For Grave Misconduct and Disrespect and Indifference to this Court's Resolutions, Ms. Zosima R. Susbilla-de Vera be DISMISSED from the service with forfeiture of all retirement benefits, except accrued leave benefits, and with perpetual and absolute disqualification from re-employment in any branch or instrumentality of the government, including government owned or controlled corporations.

Ruling of the Court

We find the findings of the OCA to be substantiated by the evidence on record, and the recommendation of dismissal from the service to be conformable to the law and pertinent jurisprudence.

Section 1, Article XI of the 1987 Constitution enshrines the principle that a public office is a public trust. It mandates that public officers and employees, who are servants of the people, must at all times be accountable to them, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.

To enforce this constitutional tenet, the Court has incessantly reminded officials and employees involved in the administration of justice to faithfully adhere to their mandated duties and responsibilities. Any act of impropriety – whether committed

by the highest judicial official or by the lowest member of the judicial workforce – can greatly erode the people's confidence in the Judiciary. The image of a court of justice is necessarily mirrored in the conduct of its personnel. It is the personnel's constant duty, therefore, to maintain the good name and standing of the court as a true temple of justice.[8]

To deserve the trust and confidence of the people, Susbilla-De Vera was expected to have her dealings with the public to be always sincere and above board. She should not lead others to believe that despite her status as a minor court employee she had the capacity to influence the outcomes of judicial matters. Her acts and actuations did not live up to the expectation, for the records unquestionably showed how she had deliberately and fraudulently misrepresented her ability to assist the complainant in the adoption of her niece and nephew. For one, if there would be such a case, she could not make such assurance to the complainant because the handling court would independently and objectively handle and decide the case based on its merits. She was also aware that her representations to the complainant about no other adoption petition being yet filed in the Family Court, and about her working together with a lawyer to advance the legal matter for the complainant were both false, for there had already been another petition for adoption initiated by the complainant's own brother, and there had been no lawyer working with her to assist the complainant.

Section 2, Canon 1 of the *Code of Conduct for Court Personnel* has enjoined all court personnel from soliciting or accepting "any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions." Susbilla-De Vera thus violated her sacred oath as a court employee to serve the Judiciary with utmost

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[8] *Velasco v. Baterbonia*, A.M. P-06-2161 (Formerly A.M. OCA IPI No. 05-2115-P), September 25, 2012, 681 SCRA 666, 673; *Office of the Court Administrator v. Recio*, A.M. No. P-04-1813 (Formerly A.M. No. 04-5-119-MeTC), May 31, 2011, 649 SCRA 552, 566-567.

loyalty and to preserve the integrity and reputation of the Judiciary as an institution dispensing justice to all. Her violation was made worse by her committing it in exchange for easy money. She was thereby guilty of corruption. She compounded her guilt by disobeying the orders of the Court requiring her to explain herself.

Under the circumstances, she committed grave misconduct, which the Court has described in *Velasco v. Baterbonia*[9] as follows:

> In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest. **Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, contrary to the rights of others**. x x x

Grave misconduct is punishable by the ultimate penalty of dismissal from the service. This is pursuant to Section 46, A, of the *Revised Rules on Administrative Cases in the Civil Service*, Series of 2011, to wit:

> Section 46. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following grave offenses shall be punishable by dismissal from the service:
>
> 1. Serious Dishonesty;
>
> 2. Gross Neglect of Duty;
>
> **3. Grave Misconduct;**
>
> x x x x x x x x x

In *Dela Cruz v. Malunao*,[10] we dismissed an erring employee of the RTC in Nueva Vizcaya who had solicited money from

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[9] *Id.* at 674.

[10] A.M. No. P-11-3019, March 20, 2012, 668 SCRA 472.

litigants in exchange for favorable decisions. For sure, the acts of Susbilla-De Vera were of the same nature and gravity.

WHEREFORE, the Court:

1. FINDS Court Stenographer **ZOSIMA SUSBILLA-DE VERA** guilty of **GROSS MISCONDUCT**; and **DISMISSES** her from the service effective immediately, with prejudice to her re-employment in the Government, including government-owned or -controlled corporations, and with forfeiture of all retirement benefits, except accrued leave credits;

2. DIRECTS the Employees Leave Division, Office of the Administrative Services, to determine the balance of **ZOSIMA SUSBILLA-DE VERA**'s earned leave credits; and

3. ORDER ZOSIMA SUSBILLA-DE VERA to return to complainant Veronica F. Galindez the amount of ₱65,000.00.

SO ORDERED.

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

EN BANC

[G.R. No. 175723. February 4, 2014]

THE CITY OF MANILA, represented by MAYOR JOSE L. ATIENZA, JR., and MS. LIBERTY M. TOLEDO, in her capacity as the City Treasurer of Manila, *petitioners, vs.* **HON. CARIDAD H. GRECIA-CUERDO, in her capacity as Presiding Judge of the Regional Trial Court, Branch 112, Pasay City; SM**

MART, INC.; SM PRIME HOLDINGS, INC.; STAR APPLIANCES CENTER; SUPERVALUE, INC.; ACE HARDWARE PHILIPPINES, INC.; WATSON PERSONAL CARE STORES, PHILS., INC.; JOLLIMART PHILS., CORP.; SURPLUS MARKETING CORPORATION and SIGNATURE LINES, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; ISSUES INVOLVING THE INCIDENT ON THE PRELIMINARY INJUNCTION BECOME MOOT AND ACADEMIC BY THE RENDITION OF THE DECISION IN THE MAIN CASE WHICH HAS BECOME FINAL AND EXECUTORY.—** [I]t clearly appears that the issues raised in the present petition, which merely involve the incident on the preliminary injunction issued by the RTC, have already become moot and academic considering that the trial court, in its decision on the merits in the main case, has already ruled in favor of respondents and that the same decision is now final and executory. Well entrenched is the rule that where the issues have become moot and academic, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value.

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT THE PROPER REMEDY TO ASSAIL A FINAL ORDER; PETITIONER SHOULD HAVE FILED A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45.—** Petitioners availed of the wrong remedy when they filed the instant special civil action for *certiorari* under Rule 65 of the Rules of Court in assailing the Resolutions of the CA which dismissed their petition filed with the said court and their motion for reconsideration of such dismissal. There is no dispute that the assailed Resolutions of the CA are in the nature of a final order as they disposed of the petition completely. It is settled that in cases where an assailed judgment or order is considered final, the remedy of the aggrieved party is appeal. Hence, in the instant case, petitioner should have filed a petition for review on *certiorari* under Rule 45, which is a continuation of the appellate process over the original case. Petitioners should

be reminded of the equally-settled rule that a special civil action for *certiorari* under Rule 65 is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction and it will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. As such, it cannot be a substitute for a lost appeal.

3. ID.; ID.; ID.; LIBERALITY IN TREATING THE INSTANT PETITION FOR *CERTIORARI* AS A PETITION FOR REVIEW ON *CERTIORARI*, APPLIED.— [I]n accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, this Court has, before, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules. Considering that the present petition was filed within the 15-day reglementary period for filing a petition for review on *certiorari* under Rule 45, that an error of judgment is averred, and because of the significance of the issue on jurisdiction, the Court deems it proper and justified to relax the rules and, thus, treat the instant petition for *certiorari* as a petition for review on *certiorari*.

4. ID.; ID.; ID.; THE COURT OF TAX APPEALS (CTA) IS VESTED WITH JURISDICTION TO ISSUE WRITS OF *CERTIORARI* AGAINST INTERLOCUTORY ORDER OF THE REGIONAL TRIAL COURT (RTC) INVOLVING TAX CASES.— [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**. On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an

interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases. Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.

5. ID.; ID.; ID.; ID.; THE GRANT OF APPELLATE JURISDICTION TO THE CTA OVER TAX CASES DECIDED BY THE RTC CARRIES WITH IT THE POWER TO ISSUE A WRIT OF *CERTIORARI* WHEN NECESSARY.— [I]t would be somewhat incongruent with the pronounced judicial abhorrence to split jurisdiction to conclude that the intention of the law is to divide the authority over a local tax case filed with the RTC by giving to the CA or this Court jurisdiction to issue a writ of *certiorari* against interlocutory orders of the RTC but giving to the CTA the jurisdiction over the appeal from the decision of the trial court in the same case. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of *certiorari* when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of *certiorari* in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter. A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit

or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

6. ID.; ID.; ID.; ID.; THE AUTHORITY OF THE CTA TO ISSUE WRITS OF *CERTIORARI* AGAINST RTC'S INTERLOCUTORY ORDERS IN A LOCAL TAX CASE IS INHERENT IN ITS APPELLATE JURISDICTION.— [I]t would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process. In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice. Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.

APPEARANCES OF COUNSEL

Office of the City Legal Officer (Manila) for petitioners.
Salvador & Associates for private respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking to reverse and set aside

the Resolutions[1] dated April 6, 2006 and November 29, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 87948.

The antecedents of the case, as summarized by the CA, are as follows:

> The record shows that petitioner City of Manila, through its treasurer, petitioner Liberty Toledo, assessed taxes for the taxable period from January to December 2002 against private respondents SM Mart, Inc., SM Prime Holdings, Inc., Star Appliances Center, Supervalue, Inc., Ace Hardware Philippines, Inc., Watsons Personal Care Stores Phils., Inc., Jollimart Philippines Corp., Surplus Marketing Corp. and Signature Lines. In addition to the taxes purportedly due from private respondents pursuant to Section 14, 15, 16, 17 of the ***Revised Revenue Code of Manila (RRCM)***, said assessment covered the local business taxes petitioners were authorized to collect under Section 21 of the same Code. Because payment of the taxes assessed was a precondition for the issuance of their business permits, private respondents were constrained to pay the ₱19,316,458.77 assessment under protest.
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> On January 24, 2004, private respondents filed [with the Regional Trial Court of Pasay City] the complaint denominated as one for "Refund or Recovery of Illegally and/or Erroneously-Collected Local Business Tax, Prohibition with Prayer to Issue TRO and Writ of Preliminary Injunction" which was docketed as Civil Case No. 04-0019-CFM before public respondent's ***sala*** [at Branch 112]. In the amended complaint they filed on February 16, 2004, private respondents alleged that, in relation to Section 21 thereof, Sections 14, 15, 16, 17, 18, 19 and 20 of the ***RRCM*** were violative of the limitations and guidelines under Section 143 (h) of Republic Act. No. 7160 [Local Government Code] on double taxation. They further averred that petitioner city's Ordinance No. 8011 which amended pertinent portions of the ***RRCM*** had already been declared to be illegal and unconstitutional by the Department of Justice.[2]

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[1] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Ruben T. Reyes (now a retired member of this Court) and Aurora Santiago-Lagman, concurring; Annexes "A" and "B," *rollo*, pp. 43-48; 49-51.

[2] *Rollo*, p. 44. (Italics and emphasis in the original; citations omitted).

In its Order[3] dated July 9, 2004, the RTC granted private respondents' application for a writ of preliminary injunction.

Petitioners filed a Motion for Reconsideration[4] but the RTC denied it in its Order[5] dated October 15, 2004.

Petitioners then filed a special civil action for *certiorari* with the CA assailing the July 9, 2004 and October 15, 2004 Orders of the RTC.[6]

In its Resolution promulgated on April 6, 2006, the CA dismissed petitioners' petition for *certiorari* holding that it has no jurisdiction over the said petition. The CA ruled that since appellate jurisdiction over private respondents' complaint for tax refund, which was filed with the RTC, is vested in the Court of Tax Appeals (CTA), pursuant to its expanded jurisdiction under Republic Act No. 9282 (RA 9282), it follows that a petition for *certiorari* seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the CTA.

Petitioners filed a Motion for Reconsideration,[7] but the CA denied it in its Resolution dated November 29, 2006.

Hence, the present petition raising the following issues:

I- Whether or not the Honorable Court of Appeals gravely erred in dismissing the case for lack of jurisdiction.

II- Whether or not the Honorable Regional Trial Court gravely abuse[d] its discretion amounting to lack or excess of jurisdiction in enjoining by issuing a Writ of Injunction the petitioners[,] their agents and/or authorized representatives from implementing Section 21 of the Revised Revenue Code of Manila, as amended, against private respondents.

III- Whether or not the Honorable Regional Trial Court gravely abuse[d] its discretion amounting to lack or excess of jurisdiction

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[3] Records, Vol. II, pp. 476-480.

[4] *Id.* at 481-490.

[5] *Id.* at 513.

[6] CA *rollo*, pp. 2-31.

[7] *Id.* at 321-326.

in issuing the Writ of Injunction despite failure of private respondents to make a written claim for tax credit or refund with the City Treasurer of Manila.

IV- Whether or not the Honorable Regional Trial Court gravely abuse[d] its discretion amounting to lack or excess of jurisdiction considering that under Section 21 of the Manila Revenue Code, as amended, they are mere collecting agents of the City Government.

V- Whether or not the Honorable Regional Trial Court gravely abuse[d] its discretion amounting to lack or excess of jurisdiction in issuing the Writ of Injunction because petitioner City of Manila and its constituents would result to greater damage and prejudice thereof. (sic)[8]

Without first resolving the above issues, this Court finds that the instant petition should be denied for being moot and academic.

Upon perusal of the original records of the instant case, this Court discovered that a Decision[9] in the main case had already been rendered by the RTC on August 13, 2007, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, this Court hereby renders JUDGMENT in favor of the plaintiff and against the defendant to grant a tax refund or credit for taxes paid pursuant to Section 21 of the Revenue Code of the City of Manila as amended for the year 2002 in the following amounts:

To plaintiff SM Mart, Inc.	-	₱ 11,462,525.02
To plaintiff SM Prime Holdings, Inc.	-	3,118,104.63
To plaintiff Star Appliances Center	-	2,152,316.54
To plaintiff Supervalue, Inc.	-	1,362,750.34
To plaintiff Ace Hardware Phils., Inc.	-	419,689.04
To plaintiff Watsons Personal Care Health Stores Phils., Inc.	-	231,453.62
To plaintiff Jollimart Phils., Corp.	-	140,908.54
To plaintiff Surplus Marketing Corp.	-	220,204.70
To plaintiff Signature Mktg. Corp.	-	94,906.34
TOTAL:	**-**	**₱ 19,316,458.77**

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[8] *Rollo*, p. 20. (Emphasis in the original)

[9] Records, Vol. II, pp. 761-762.

Defendants are further enjoined from collecting taxes under Section 21, Revenue Code of Manila from herein plaintiff.

SO ORDERED.[10]

The parties did not inform the Court but based on the records, the above Decision had already become final and executory per the Certificate of Finality[11] issued by the same trial court on October 20, 2008. In fact, a Writ of Execution[12] was issued by the RTC on November 25, 2009.

In view of the foregoing, it clearly appears that the issues raised in the present petition, which merely involve the incident on the preliminary injunction issued by the RTC, have already become moot and academic considering that the trial court, in its decision on the merits in the main case, has already ruled in favor of respondents and that the same decision is now final and executory. Well entrenched is the rule that where the issues have become moot and academic, there is no justiciable controversy, thereby rendering the resolution of the same of no practical use or value.[13]

In any case, the Court finds it necessary to resolve the issue on jurisdiction raised by petitioners owing to its significance and for future guidance of both bench and bar. It is a settled principle that courts will decide a question otherwise moot and academic if it is capable of repetition, yet evading review.[14]

However, before proceeding, to resolve the question on jurisdiction, the Court deems it proper to likewise address a procedural error which petitioners committed.

Petitioners availed of the wrong remedy when they filed the instant special civil action for *certiorari* under Rule 65 of the

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[10] *Id.* at 762. (Emphasis in the original)

[11] *Id.* at 822.

[12] *Id.* at 837.

[13] *Garcia v. COMELEC*, 328 Phil. 288, 292 (1996).

[14] *Caneland Sugar Corporation v. Alon*, G.R. No. 142896, September 12, 2007, 533 SCRA 28, 33.

Rules of Court in assailing the Resolutions of the CA which dismissed their petition filed with the said court and their motion for reconsideration of such dismissal. There is no dispute that the assailed Resolutions of the CA are in the nature of a final order as they disposed of the petition completely. It is settled that in cases where an assailed judgment or order is considered final, the remedy of the aggrieved party is appeal. Hence, in the instant case, petitioner should have filed a petition for review on *certiorari* under Rule 45, which is a continuation of the appellate process over the original case.[15]

Petitioners should be reminded of the equally-settled rule that a special civil action for *certiorari* under Rule 65 is an original or independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction and it will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[16] As such, it cannot be a substitute for a lost appeal.[17]

Nonetheless, in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, this Court has, before, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.[18] Considering that the present petition was filed within the 15-day reglementary period for

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[15] *Republic of the Philippines, represented by Abusama M. Alid, Officer-in-Charge, Department of Agriculture-Regional Field Unit XII (DA-RFU-XII) v. Abdulwahab A. Bayao, et al.*, G.R. No. 179492, June 5, 2013.

[16] *Mendez v. Court of Appeals*, G.R. No. 174937, June 13, 2012, 672 SCRA 200, 207.

[17] *Id.*

[18] *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424, 444, citing *Oaminal v. Castillo*, 459 Phil. 542, 556 (2003); *Republic v. Court of Appeals*, 379 Phil. 92, 98 (2000); *Delsan Transport Lines, Inc. v. Court of Appeals*, 335 Phil. 1066, 1075 (1997); *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 389 Phil. 644, 655 (2000).

filing a petition for review on *certiorari* under Rule 45, that an error of judgment is averred, and because of the significance of the issue on jurisdiction, the Court deems it proper and justified to relax the rules and, thus, treat the instant petition for *certiorari* as a petition for review on *certiorari*.

Having disposed of the procedural aspect, we now turn to the central issue in this case. The basic question posed before this Court is whether or not the CTA has jurisdiction over a special civil action for *certiorari* assailing an interlocutory order issued by the RTC in a local tax case.

This Court rules in the affirmative.

On June 16, 1954, Congress enacted Republic Act No. 1125 (RA 1125) creating the CTA and giving to the said court jurisdiction over the following:

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

(3) Decisions of provincial or City Boards of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law, including rules and regulations relative thereto.

On March 30, 2004, the Legislature passed into law Republic Act No. 9282 (RA 9282) amending RA 1125 by expanding the jurisdiction of the CTA, enlarging its membership and elevating its rank to the level of a collegiate court with special jurisdiction. Pertinent portions of the amendatory act provides thus:

Sec. 7. *Jurisdiction.* - The CTA shall exercise:

a. **Exclusive appellate jurisdiction to review by appeal**, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3. **Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction**;

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the

Tariff and Customs Code;

7. Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.

b. Jurisdiction over cases involving criminal offenses as herein provided:

1. Exclusive original jurisdiction over all criminal offenses arising from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs: Provided, however, That offenses or felonies mentioned in this paragraph where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) or where there is no specified amount claimed shall be tried by the regular Courts and the jurisdiction of the CTA shall be appellate. Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the CTA, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action will be recognized.

2. Exclusive appellate jurisdiction in criminal offenses:

a. Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respected territorial jurisdiction.

b. Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in

> the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.
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> c. Jurisdiction over tax collection cases as herein provided:
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> 1. Exclusive original jurisdiction in tax collection cases involving final and executory assessments for taxes, fees, charges and penalties: Provides, however, that collection cases where the principal amount of taxes and fees, exclusive of charges and penalties, claimed is less than One million pesos (₱1,000,000.00) shall be tried by the proper Municipal Trial Court, Metropolitan Trial Court and Regional Trial Court.
>
> 2. Exclusive appellate jurisdiction in tax collection cases:
>
> a. Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax collection cases originally decided by them, in their respective territorial jurisdiction.
>
> b. Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the Exercise of their appellate jurisdiction over tax collection cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction.[19]

A perusal of the above provisions would show that, while it is clearly stated that the CTA has exclusive appellate jurisdiction over decisions, orders or resolutions of the RTCs in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction, there is no categorical statement under RA 1125 as well as the amendatory RA 9282, which provides that the CTA has jurisdiction over petitions for *certiorari* assailing interlocutory orders issued by the RTC in local tax cases filed before it.

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[19] Emphasis supplied.

The prevailing doctrine is that the authority to issue writs of *certiorari* involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law and cannot be implied from the mere existence of appellate jurisdiction.[20] Thus, in the cases of *Pimentel v. COMELEC*,[21] *Garcia v. De Jesus*,[22] *Veloria v. COMELEC*,[23] *Department of Agrarian Reform Adjudication Board v. Lubrica*,[24] *and Garcia v. Sandiganbayan*,[25] this Court has ruled against the jurisdiction of courts or tribunals over petitions for *certiorari* on the ground that there is no law which expressly gives these tribunals such power.[26] It must be observed, however, that with the exception of *Garcia v. Sandiganbayan*,[27] these rulings pertain not to regular courts but to tribunals exercising quasi-judicial powers. With respect to the Sandiganbayan, Republic Act No. 8249[28] now provides that the special criminal court has exclusive original jurisdiction over petitions for the issuance of the *writs* of *mandamus*, prohibition, *certiorari*, *habeas corpus*, injunctions, and other ancillary *writs* and processes in aid of its appellate jurisdiction.

In the same manner, Section 5 (1), Article VIII of the 1987 Constitution grants power to the Supreme Court, in the exercise

[20] *Department of Agrarian Reform Adjudication Board v. Lubrica*, 497 Phil. 313, 322 (2005); *Veloria v. COMELEC*, G.R. No. 94771, July 29, 1992, 211 SCRA 907, 915.

[21] 189 Phil. 581 (1980).

[22] G.R. Nos. 88158 and 97108-09, March 4, 1992, 206 SCRA 779.

[23] *Supra* note 20.

[24] *Supra* note 20.

[25] G..R. No. 114135, October 7, 1994, 237 SCRA 552.

[26] *Department of Agrarian Reform Adjudication Board v. Lubrica*, *supra* note 20; *Veloria v. COMELEC*, *supra* note 20; *Garcia v. Sandiganbayan*, *id*. at 563-564; *Garcia v. De Jesus*, *supra* note 22, at 787-788; *Pimentel v. COMELEC*, *supra* note 21, at 587.

[27] *Supra* note 25.

[28] An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, As Amended, Providing Funds Therefor, And for Other Purposes.

of its original jurisdiction, to issue writs of *certiorari,* prohibition and *mandamus*. With respect to the Court of Appeals, Section 9 (1) of Batas Pambansa Blg. 129 (BP 129) gives the appellate court, also in the exercise of its original jurisdiction, the power to issue, among others, a writ of *certiorari,*whether or not in aid of its appellate jurisdiction. As to Regional Trial Courts, the power to issue a writ of *certiorari,* in the exercise of their original jurisdiction, is provided under Section 21 of BP 129.

The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**.

On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases.

Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.

Consistent with the above pronouncement, this Court has held as early as the case of *J.M. Tuason & Co., Inc. v.*

Jaramillo, et al.[29] that "if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of *certiorari*, in aid of its appellate jurisdiction."[30] This principle was affirmed in *De Jesus v. Court of* Appeals,[31] where the Court stated that "a court may issue a writ of *certiorari* in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court."[32] The rulings in *J.M. Tuason* and *De Jesus* were reiterated in the more recent cases of *Galang, Jr. v. Geronimo*[33] and *Bulilis v. Nuez*.[34]

Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer.

If this Court were to sustain petitioners' contention that jurisdiction over their *certiorari* petition lies with the CA, this Court would be confirming the exercise by two judicial bodies, the CA and the CTA, of jurisdiction over basically the same subject matter – precisely the split-jurisdiction situation which is anathema to the orderly administration of justice.[35] The Court cannot accept that such was the legislative motive, especially considering that the law expressly confers on the CTA, the tribunal with the specialized competence over tax and tariff matters, the role of judicial review over local tax cases without mention of any other court that may exercise such power. Thus,

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[29] 118 Phil. 1022 (1963).

[30] *J. M. Tuason & Co., Inc. v. Jaramillo, et al., supra,* at 1026.

[31] G.R. No. 101630, August 24, 1992, 212 SCRA 823.

[32] *De Jesus v. Court of Appeals, supra,* at 827-828.

[33] G.R. No. 192793, February 22, 2011, 643 SCRA 631, 635-636.

[34] G.R. No. 195953, August 9, 2011, 655 SCRA 241, 246-247.

[35] *Southern Cross Cement Corporation v. Philippine Cement Manufacturers Corp*., 478 Phil. 85, 125 (2004).

the Court agrees with the ruling of the CA that since appellate jurisdiction over private respondents' complaint for tax refund is vested in the CTA, it follows that a petition for *certiorari* seeking nullification of an interlocutory order issued in the said case should, likewise, be filed with the same court. To rule otherwise would lead to an absurd situation where one court decides an appeal in the main case while another court rules on an incident in the very same case.

Stated differently, it would be somewhat incongruent with the pronounced judicial abhorrence to split jurisdiction to conclude that the intention of the law is to divide the authority over a local tax case filed with the RTC by giving to the CA or this Court jurisdiction to issue a writ of *certiorari* against interlocutory orders of the RTC but giving to the CTA the jurisdiction over the appeal from the decision of the trial court in the same case. It is more in consonance with logic and legal soundness to conclude that the grant of appellate jurisdiction to the CTA over tax cases filed in and decided by the RTC carries with it the power to issue a writ of *certiorari* when necessary in aid of such appellate jurisdiction. The supervisory power or jurisdiction of the CTA to issue a writ of *certiorari* in aid of its appellate jurisdiction should co-exist with, and be a complement to, its appellate jurisdiction to review, by appeal, the final orders and decisions of the RTC, in order to have complete supervision over the acts of the latter.[36]

A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction. For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere

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[36] *Breslin v. Luzon Stevedoring Company*, 84 Phil. 618, 623 (1949).

with the proper exercise of its rightful jurisdiction in cases pending before it.[37]

Lastly, it would not be amiss to point out that a court which is endowed with a particular jurisdiction should have powers which are necessary to enable it to act effectively within such jurisdiction. These should be regarded as powers which are inherent in its jurisdiction and the court must possess them in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of such process.

In this regard, Section 1 of RA 9282 states that the CTA shall be of the same level as the CA and shall possess all the inherent powers of a court of justice.

Indeed, courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or are essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.[38]

Thus, this Court has held that "while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and

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[37] 4 Am Jur 2d, Appeal and Error, §5, p. 536; 2 Am Jur, Appeal and Error, §9, 850.

[38] *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 648.

for the enforcement of its judgments and mandates."[39] Hence, demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.[40]

Based on the foregoing disquisitions, it can be reasonably concluded that the authority of the CTA to take cognizance of petitions for *certiorari* questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.

Finally, it would bear to point out that this Court is not abandoning the rule that, insofar as quasi-judicial tribunals are concerned, the authority to issue writs of *certiorari* must still be expressly conferred by the Constitution or by law and cannot be implied from the mere existence of their appellate jurisdiction. This doctrine remains as it applies only to quasi-judicial bodies.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

Del Castillo, J., no part.

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[39] *Treasurer-Assessor v. University of the Philippines*, 148 Phil. 526, 539 (1971); *Amalgamated Laborers' Association v. Court of Industrial Relations*, 131 Phil. 374, 380 (1968); *Philippine Airlines Employees' Association v. Philippine Airlines, Inc*. 120 Phil. 383, 390 (1964). (Citations omitted).

[40] *Id.*

EN BANC

[* G.R. No. 178497. February 4, 2014]

EDITA T. BURGOS, *petitioner, vs.* **GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, MAJ. GEN. DELFIN BANGIT, LT. COL. NOEL CLEMENT, LT. COL. MELQUIADES FELICIANO, and DIRECTOR GENERAL OSCAR CALDERON,** *respondents.*

[G.R. No. 183711. February 4, 2014]

EDITA T. BURGOS, *petitioner, vs.* **GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, MAJ. GEN. DELFIN BANGIT, LT. COL. NOEL CLEMENT, LT. COL. MELQUIADES FELICIANO, and DIRECTOR GENERAL OSCAR CALDERON,** *respondents.*

[G.R. No. 183712. February 4, 2014]

EDITA T. BURGOS, *petitioner, vs.* **GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, LT. COL. MELQUIADES FELICIANO, and LT. COL. NOEL CLEMENT,** *respondents.*

[G.R. No. 183713. February 4, 2014]

EDITA T. BURGOS, *petitioner, vs.* **CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES, GEN. HERMOGENES ESPERON, JR.; Commanding General of the Philippine Army, LT. GEN. ALEXANDER YANO; and Chief of the Philippine National Police, DIRECTOR GENERAL AVELINO RAZON, JR.,** *respondents.*

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[*] G. R. No. 178497 is included.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; RELEVANCY OF DOCUMENTS; WHERE A SWORN AFFIDAVIT OF A WITNESS ESTABLISHES THE RELEVANCE OF THE DOCUMENTS RELATIVE TO THE IDENTITIES OF MILITARY PERSONNEL ALLEGEDLY INVOLVED IN THE INCIDENT.— Pursuant to the Court's October 11, 2011 Resolution, the CHR submitted its March 20, 2012 Progress Report on its continuing investigation of Jonas' abduction. Attached to this Progress Report was Virgilio Eustaquio's sworn affidavit stating that: (1) he was one of the victims of the abduction incident on May 22, 2006, otherwise known as the "ERAP FIVE" incident; (2) as a result of this incident, they filed a case with the Ombudsman against Commodore Leonardo Calderon and other members of the Intelligence Service, AFP (*ISAFP*) for arbitrary detention, unlawful arrest, maltreatment of prisoners, grave threats, incriminatory machination and robbery; and (3) the male abductor of Jonas appearing in the cartographic sketch shown to him by the CHR was among the raiders who abducted him and his four companions because it resembled the cartographic sketch he described in relation to the ERAP FIVE incident on May 22, 2006. After reviewing the submissions of both the respondents and the CHR pursuant to the Court's July 5, 2011, August 23, 2011 and October 11, 2011 Resolutions, we resolve to grant the CHR access to these requested documents to allow them the opportunity to ascertain the true identities of the persons depicted in the cartographic sketches. At this point, we emphasize that the sworn affidavit of Eustaquio (that attests to the resemblance of one of Jonas' abductors to the abductors of the ERAP FIVE) constitutes the sought-after missing link that establishes the relevance of the requested documents to the present case. We note that this lead may help the CHR ascertain the identities of those depicted in the cartographic sketches as two of Jonas' abductors (one male and one female) who, to this day, remain unidentified.

2. REMEDIAL LAW; WRIT OF *AMPARO*; THE PREVENTIVE AND CURATIVE ROLE OF THE WRIT OF *AMPARO* HAVE BEEN SERVED IN CASE AT BAR.— We note and conclude, based on the developments highlighted above, that the beneficial purpose of the Writ of *Amparo* has been served in the present

case. As we held in *Razon, Jr. v. Tagitis*, the writ merely embodies the Court's directives **to police agencies to undertake specified courses of action** to address the enforced disappearance of an individual. The Writ of *Amparo* serves both a *preventive* and a *curative* role. It is *curative* as it facilitates the subsequent punishment of perpetrators through the investigation and remedial action that it directs. The focus is on procedural curative remedies rather than on the tracking of a specific criminal or the resolution of administrative liabilities. The unique nature of *Amparo* proceedings has led us to define terms or concepts specific to what the proceedings seek to achieve. x x x In the present case, while Jonas remains missing, the series of calculated directives issued by the Court outlined above and the extraordinary diligence the CHR demonstrated in its investigations resulted in the criminal prosecution of Lt. Baliaga. We take judicial notice of the fact that the Regional Trial Court, Quezon City, Branch 216, has already found probable cause for arbitrary detention against Lt. Baliaga and has ordered his arrest in connection with Jonas' disappearance.

3. ID.; ID.; REISSUANCE OF THE WRIT OF *AMPARO* WOULD BE REDUNDANT AND SUPERFLUOUS.— [T]he final ruling of the CA that confirmed the validity of the issuance of the Writ of *Amparo* and its determination of the entities responsible for the enforced disappearance of Jonas, we resolve to deny the petitioner's prayer to issue the writ of *Amparo* anew and to refer the case to the CA based on the newly discovered evidence. We so conclude as the petitioner's request for the reissuance of the writ and for the rehearing of the case by the CA would be redundant and superfluous in light of: (1) the ongoing investigation being conducted by the DOJ through the NBI; (2) the CHR investigation directed by the Court in this Resolution; and (3) the continuing investigation directed by the CA in its March 18, 2013 decision. We emphasize that while the Rule on the Writ of *Amparo* accords the Court a wide latitude in crafting remedies to address an enforced disappearance, it cannot (without violating the nature of the writ of *Amparo* as a summary remedy that provides rapid judicial relief) grant remedies that would complicate and prolong rather than expedite the investigations already ongoing. Note that the CA has already determined with finality that Jonas was a victim of enforced disappearance.

4. ID.; ID.; ID.; WITH THE DENIAL OF THE URGENT *EX PARTE* MOTION *EX ABUNDANTI CAUTELA*, THE COURT DOES NOT RULE ON THE ADMISSIBILITY OR THE MERITS OF THE NEWLY DISCOVERED EVIDENCE; REFERRAL OF THE MOTION TO THE PROPER GOVERNMENT AGENCIES, ORDERED.— We clarify that by denying the petitioner's motion, we do not thereby rule on the admissibility or the merits of the newly discovered evidence submitted by the petitioner. We likewise do not foreclose any investigation by the proper investigative and prosecutory agencies of the other entities whose identities and participation in the enforced disappearance of Jonas may be disclosed in future investigations and proceedings. Considering that the present case has already reached the prosecution stage, the petitioner's motion should have been filed with the proper investigative and prosecutor agencies of the government. To expedite proceedings, we refer the petitioner's motion, this Resolution and its covered cases to the DOJ for investigation, *for the purpose of filing the appropriate criminal charges* in the proper courts against the proper parties, if warranted, based on the gathered evidence. For this purpose, we direct the petitioner to furnish the DOJ and the NBI copies of her Urgent *Ex Parte* Motion *Ex Abundanti Cautela*, together with the sealed attachments to the Motion, within five (5) days from receipt of this Resolution.

APPEARANCES OF COUNSEL

Fernandez & Kasilag-Villa for petitioner in G.R. No. 178497.
The Solicitor General for respondents

R E S O L U T I O N

BRION, *J.*:

We resolve in this Resolution all the pending incidents in this case, specifically:

(a) The determination of the relevance and advisability of the public disclosure of the documents submitted by respondents President Gloria Macapagal-Arroyo, Lt. Gen. Romeo P. Tolentino, Maj. Gen. Juanito Gomez,

Maj. Gen. Delfin Bangit, Lt. Col. Noel Clement, Lt. Col. Melquiades Feliciano, Director General Oscar Calderon, Chief of Staff of the Armed Forces of the Philippines, Gen. Hermogenes Esperon, Jr.; Commanding General of the Philippine Army, Lt. Gen. Alexander Yano; and Chief of the Philippine National Police, Director General Avelino Razon, Jr. to this Court per paragraph III (i) of the *fallo* of our July 5, 2011 Resolution; and

(b) The Urgent *Ex Parte* Motion *Ex Abundanti Cautela*[1] (together with sealed attachments) filed by petitioner Edita T. Burgos praying that the Court: (1) order the persons named in the sealed documents impleaded in CA-G.R. SP No. 00008-WA and G.R. No. 183713; (2) issue a writ of *Amparo* on the basis of the newly discovered evidence (the sealed attachments to the motion); and (3) refer the cases to the Court of Appeals (*CA*) for further hearings on the newly discovered evidence.

FACTUAL ANTECEDENTS

A. The Court's June 22, 2010 Resolution

These incidents stemmed from our June 22, 2010 Resolution referring the present case to the Commission on Human Rights (*CHR*) as the Court's directly commissioned agency, tasked with the continuation of the investigation of Jonas Joseph T. Burgos' abduction with the obligation to report its factual findings and recommendations to this Court. This referral was necessary as the investigation by the Philippine National Police-Criminal Investigation and Detection Group (*PNP-CIDG*), by the Armed Forces of the Philippines (*AFP*) Provost Marshal, and even the initial CHR investigation had been less than complete. In all of them, there were significant lapses in the handling of the investigation. In particular, we **highlighted the PNP-CIDG's failure to identify the cartographic sketches of two (one male and one female) of the five abductors of Jonas, based on their interview with the eyewitnesses to the abduction.**

[1] Dated April 1, 2013; *rollo*, Vol. 3, pp. 3577-3586.

In this same Resolution, we also affirmed the CA's dismissal of the petitions for Contempt and issuance of a Writ of *Amparo* with respect to President Macapagal-Arroyo who was then entitled, as President, to immunity from suit.

The March 15, 2011 CHR Report

On March 15, 2011, the CHR submitted to the Court its *Investigation Report on the Enforced Disappearance of Jonas Burgos* (*CHR Report*), in compliance with our June 22, 2010 Resolution. On the basis of the gathered evidence, the CHR submitted the following findings:

> Based on the facts developed by evidence obtaining in this case, **the CHR finds that the enforced disappearance of Jonas Joseph T. Burgos had transpired; and that his constitutional rights to life liberty and security were violated by the Government have been fully determined.**
>
> **Jeffrey Cabintoy and Elsa Agasang have witnessed on that fateful day of April 28, 2007 the forcible abduction of Jonas Burgos by a group of about seven (7) men and a woman** from the extension portion of Hapag Kainan Restaurant, located at the ground floor of Ever Gotesco Mall, Commonwealth Avenue, Quezon City.
>
> xxx x x x xxx
>
> The eyewitnesses mentioned above were **Jeffrey Cabintoy (Jeffrey)** and Elsa Agasang (Elsa), who at the time of the abduction were working as **busboy** and Trainee-Supervisor, respectively, at Hapag Kainan Restaurant.
>
> **In his Sinumpaang Salaysay, Jeffrey had a clear recollection of the face of HARRY AGAGEN BALIAGA, JR. as one of the principal abductors,** apart from the faces of the two abductors in the cartographic sketches that he described to the police, after he was shown by the *Team* the pictures in the PMA Year Book of Batch Sanghaya 2000 and group pictures of men taken some years thereafter.
>
> **The same group of pictures were shown to detained former 56th IB Army trooper Edmond M. Dag-uman (Dag-uman), who also positively identified Lt. Harry Baliaga, Jr. Daguman's *Sinumpaang Salaysay* states that he came to know Lt. Baliaga as a Company Commander in the 56th IB while he was still in the military service**

(with Serial No. 800693, from 1997 to 2002) also with the 56th IB but under 1Lt. Usmalik Tayaban, the Commander of Bravo Company. When he was arrested and brought to the 56th IB Camp in April 2005, he did not see Lt. Baliaga anymore at the said camp. The similar reaction that the pictures elicited from both Jeffrey and Daguman did not pass unnoticed by the *Team*. Both men always look pensive, probably because of the pathetic plight they are in right now. It came as a surprise therefore to the *Team* when they could hardly hide their smile upon seeing the face of Baliaga, as if they know the man very well.

Moreover, when the *Team* asked how certain Jeffrey was or [sic] that it was indeed Baliaga that he saw as among those who actually participated in Jonas' abduction. Jeffrey was able to give a graphic description and spontaneously, to boot, the blow by blow account of the incident, including the initial positioning of the actors, specially Baliaga, who even approached, talked to, and prevented him from interfering in their criminal act.

A Rebel-returnee (RR) named Maria Vita Lozada *y* Villegas @KA MY, has identified the face of the female in the cartographic sketch as a certain Lt. Fernando. While Lozada refuses to include her identification of Lt. Fernando in her *Sinumpaang Salaysay* for fear of a backlash, she told the Team that she was certain it was Lt. Fernando in the cartographic sketch since both of them were involved in counter-insurgency operations at the 56th IB, while she was under the care of the battalion from March 2006 until she left the 56th IB Headquarters in October 2007. Lozada's involvement in counter-insurgency operations together with Lt. Fernando was among the facts gathered by the CHR Regional Office 3 Investigators, whose investigation into the enforced disappearance of Jonas Joseph Burgos was documented by way of an After Mission Report dated August 13, 2008.

Most if not all the actual abductors would have been identified had it not been for what is otherwise called as *evidentiary difficulties* shamelessly put up by some police and military elites. The deliberate refusal of TJAG Roa to provide the CHR with the requested documents does not only defy the Supreme Court directive to the AFP but *ipso facto* created a disputable presumption that AFP personnel were responsible for the abduction and that their superiors would be found accountable, if not responsible, for the crime committed. This observation finds support in the disputable

presumption "*That evidence willfully suppressed would be adverse if produced.*" (Paragraph (e), Section 3, Rule 131 on Burden of Proof and Presumptions, Revised Rules on Evidence of the Rules of Court of the Philippines).

In saying that the requested document is irrelevant, the *Team* has deemed that the requested documents and profiles would help ascertain the true identities of the cartographic sketches of two abductors because a certain Virgilio Eustaquio has claimed that one of the intelligence operatives involved in the 2007 ERAP 5 case fits the description of his abductor.

As regards the PNP CIDG, the positive identification of former 56th IB officer Lt. HARRY A. BALIAGA, JR. as one of the principal abductors has effectively crushed the theory of the CIDG witnesses that the NPAs abducted Jonas. Baliaga's true identity and affiliation with the military have been established by overwhelming evidence corroborated by detained former Army trooper Dag-uman.

For lack of material time, the Commission will continue to investigate the enforced disappearance of Jonas Burgos as an independent body and pursuant to its mandate under the 1987 Constitution. Of particular importance are the identities and locations of the persons appearing in the cartographic sketches; the allegations that CIDG Witnesses Emerito G. Lipio and Meliza Concepcion-Reyes are AFP enlisted personnel and the alleged participation of Delfin De Guzman @ Ka Baste in the abduction of Jonas Burgos whose case for Murder and Attempted Murder was dismissed by the court for failure of the lone witness, an army man of the 56th IB to testify against him.

Interview with Virgilio Eustaquio, Chairman of the Union Masses for Democracy and Justice (UMDJ), **revealed that the male abductor of Jonas Burgos appearing in the cartographic sketch was among the raiders who abducted him and four others, identified as Jim Cabauatan, Jose Curament, Ruben Dionisio and Dennis Ibona otherwise known as ERAP FIVE.**

Unfortunately, and as already pointed out above, The Judge Advocate General (TJAG) turned down the request of the Team for a profile of the operatives in the so-called "*Erap 5*" abduction on the ground of relevancy and branded the request as a fishing expedition per its Disposition Form dated September 21, 2010.

Efforts to contact Virgilio Eustaquio to secure his affidavit proved futile, as his present whereabouts cannot be determined. And due to lack of material time, the Commission decided to pursue the same and determine the whereabouts of the other members of the "*Erap 5*" on its own time and authority as an independent body.[2]

B. The Court's July 5, 2011 Resolution

On July 5, 2011, in light of the new evidence and leads the CHR uncovered, we issued a Resolution: (1) issuing anew a Writ of *Habeas Corpus* and referring the *habeas corpus* petition to the CA; (2) **holding in abeyance our ruling on the merits of the *Amparo* aspect of the case; referring back the same to the CA in order to allow Lt. Harry A. Baliaga, Jr. and the present *Amparo* respondents to file their Comments on the CHR Report; and ordering Lt. Baliaga to be impleaded as a party to the *Amparo* petition**; and (3) affirming the dismissal of the petitioner's petition for Contempt, without prejudice to the re-filing of the contempt charge as may be warranted by the results of the subsequent CHR investigation. To quote the exact wording of our Resolution:

WHEREFORE, in the interest of justice and for the foregoing reasons, we **RESOLVE** to:

I. IN G.R. NO. 183711 (*HABEAS CORPUS PETITION, CA-G.R. SP No. 99839*)

a. **ISSUE** a Writ of *Habeas Corpus* anew, returnable to the Presiding Justice of the Court of Appeals who shall immediately refer the writ to the same Division that decided the *habeas corpus* petition;

b. **ORDER** Lt. Harry A. Baliaga, Jr. impleaded in CA-G.R. SP No. 99839 and G.R. No. 183711, and **REQUIRE** him, together with the incumbent Chief of Staff, Armed Forces of the Philippines; the incumbent Commanding General, Philippine Army; and the Commanding Officer of the 56th IB, 7th Infantry Division, Philippine Army at the time of the disappearance of Jonas Joseph T. Burgos, Lt. Col. Melquiades Feliciano, to produce the person of Jonas Joseph T. Burgos under the

[2] *Id.* at 808-812, Vol. 1; italics, emphases and underscores ours.

terms the Court of Appeals shall prescribe, and to show cause why Jonas Joseph T. Burgos should not be released from detention;

c. **REFER** back the petition for *habeas corpus* to the same Division of the Court of Appeals which shall continue to hear this case after the required Returns shall have been filed and render a new decision within thirty (30) days after the case is submitted for decision; and

d. **ORDER** the Chief of Staff of the Armed Forces of the Philippines and the Commanding General of the Philippine Army to be impleaded as parties, separate from the original respondents impleaded in the petition, and the dropping or deletion of President Gloria Macapagal-Arroyo as party-respondent.

II. IN G.R. NO. 183712 (*CONTEMPT OF COURT CHARGE, CA-G.R. SP No. 100230*)

e. **AFFIRM** the dismissal of the petitioner's petition for Contempt in CA-G.R. SP No. 100230, without prejudice to the re-filing of the contempt charge as may be warranted by the results of the subsequent CHR investigation this Court has ordered; and

f. **ORDER** the dropping or deletion of former President Gloria Macapagal-Arroyo as party-respondent, in light of the unconditional dismissal of the contempt charge against her.

III. IN G.R. NO. 183713 (*WRIT OF AMPARO PETITION, CA-G.R. SP No. 00008-WA*)

g. **ORDER** Lt. Harry A. Baliaga, Jr., impleaded in CA-G.R. SP No. 00008-WA and G.R. No. 183713, without prejudice to similar directives we may issue with respect to others whose identities and participation may be disclosed in future investigations and proceedings;

h. **DIRECT** Lt. Harry A. Baliaga, Jr., and the present *Amparo* respondents to file their Comments on the CHR report with the Court of Appeals, within a non-extendible period of fifteen (15) days from receipt of this Resolution.

i. **REQUIRE** General Roa of the Office of the Judge Advocate General, AFP; the Deputy Chief of Staff for Personnel, JI,

AFP, *at the time of our June 22, 2010 Resolution*; and then Chief of Staff, AFP, Gen. Ricardo David, (a) to show cause and explain to this Court, within a non-extendible period of fifteen (15) days from receipt of this Resolution, why they should not be held in contempt of this Court for their defiance of our June 22, 2010 Resolution; and (b) to submit to this Court, within a non-extendible period of fifteen (15) days from receipt of this Resolution, a copy of the documents requested by the CHR, particularly:

1) The profile and Summary of Information and pictures of T/Sgt. Jason Roxas (Philippine Army); Cpl. Maria Joana Francisco (Philippine Air Force); M/Sgt. Aron Arroyo (Philippine Air Force); an *alias* T.L. - all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the Armed Forces of the Philippines - and 2Lt. Fernando, a lady officer involved in the counter-insurgency operations of the 56th IB in 2006 to 2007;

2) Copies of the records of the 2007 ERAP 5 incident in Kamuning, Quezon City and the complete list of the intelligence operatives involved in that said covert military operation, including their respective Summary of Information and individual pictures; and

3) Complete list of the officers, women and men assigned at the 56th and 69th Infantry Battalion and the 7th Infantry Division from January 1, 2004 to June 30, 2007 with their respective profiles, Summary of Information and pictures; including the list of captured rebels and rebels who surrendered to the said camps and their corresponding pictures and copies of their Tactical Interrogation Reports and the cases filed against them, if any.

These documents shall be released exclusively to this Court for our examination to determine their relevance to the present case and the advisability of their public disclosure.

j. **ORDER** the Chief of Staff of the Armed Forces of the Philippines and the Commanding General of the Philippine Army to be impleaded as parties, in representation of their respective organizations, separately from the original

respondents impleaded in the petition; and the dropping of President Gloria Macapagal-Arroyo as party-respondent;

k. **REFER** witnesses Jeffrey T. Cabintoy and Elsa B. Agasang to the Department of Justice for admission to the Witness Protection Security and Benefit Program, subject to the requirements of Republic Act No. 6981; and

l. **NOTE** the criminal complaint filed by the petitioner with the DOJ which the latter may investigate and act upon on its own pursuant to Section 21 of the Rule on the Writ of *Amparo*.[3]

C. The Court's August 23, 2011 Resolution

On August 23, 2011, we issued a Resolution resolving among others:

(a) to **NOTE** the Explanation separately filed by Brigadier Gen. Gilberto Jose C. Roa, Armed Forces of the Philippines (*AFP*), General Ricardo A. David, Jr., AFP (ret.), and Rear Admiral Cornelio A. dela Cruz, Jr., AFP;

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(c) to **LIMIT** the documents to be submitted to this Court to those assigned at the 56th Infantry Battalion (IB) from January 1, 2004 to June 30, 2007, and to **SUBMIT** these materials within ten (10) days from notice of this Resolution, **without prejudice** to the submission of the other documents required under the Court's July 5, 2011 Resolution, pertaining to those assigned at the other units of the AFP, should the relevance of these documents be established during the Court of Appeal's hearing;

(d) to **REQUIRE** the submission, within ten (10) days from notice of this Resolution, of the Summary of Information and individual pictures of the intelligence operatives involved in the ERAP 5 incident, in compliance with the Court's July 5, 2011 Resolution;

(e) to **REQUIRE** the submission, within ten (10) days from notice of this Resolution, of the profile and Summary of Information and pictures of an *alias* T.L., reportedly assigned with Military

[3] *Id.* at 956-960; italics, emphases and underscores in the original.

Intelligence Group 15 of the Intelligence Service of the AFP and of a 2Lt. Fernando, a lady officer in the counter-insurgency operations of the 56th IB in 2006 to 2007, in compliance with the Court's July 5, 2011 Resolution.[4]

The Respondents' September 23, 2011 Manifestation and Motion

On September 23, 2011, the respondents submitted a Manifestation and Motion in compliance with the Court's August 23, 2011 Resolution. Attached to this Manifestation and Motion are the following documents:

a. The Summary of Information (SOI) of the officers and enlisted personnel of the 56th IB, 7th ID from January 1, 2004 to June 30, 2007;

b. The Summary of Information (SOI) of the intelligence operatives who were involved in the ERAP 5 incident; and

c. The Summary of Information (SOI) of 2Lt. Fernando, who was a member of the 56th IB, 7th ID.[5]

D. The Court's September 6, 2011 Resolution

On August 19, 2011, the petitioner filed a Manifestation and a Motion for Clarificatory Order praying among others that she be allowed to examine the documents submitted to the Court pursuant to paragraph III (i) of the Court's July 5, 2011 Resolution. In our September 6, 2011 Resolution, we resolved, among others, to:

(3) **DENY** the petitioner's request to be allowed to examine the documents submitted to this Court per paragraph (i) of the *fallo* of our July 5, 2011 Resolution, **without prejudice** to our later determination of the relevance and of the advisability of public disclosure of those documents/materials;[6]

E. The Court's October 11, 2011 Resolution

On October 11, 2011, we issued a Resolution requiring the

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[4] *Id.* at 1198-1199; italics and emphases in the original.

[5] *Id.* at 1261-1264, Vol. 2.

[6] *Id.* at 3025, Vol. 3; emphases in the original.

CHR to secure Virgilio Eustaquio's affidavit, and to submit a report of its ongoing investigation of Jonas' abduction, *viz*:

(1) **REQUIRE** the Commission on Human Rights to undertake all available measures to obtain the affidavit of witness Virgilio Eustaquio in connection with his allegation that one of the male abductors of Jonas Joseph T. Burgos, appearing in the cartographic sketch, was among the "raiders" who abducted him and four others, identified as Jim Cabauatan, Jose Curament, Ruben Dionisio and Dennis Ibona (otherwise known as the "ERAP FIVE");

(2) **DIRECT** the Commission on Human Rights to submit to this Court, within thirty (30) days from receipt of this Resolution, a Report, with its recommendations of its ongoing investigation of Burgos' abduction, and the affidavit of Virgilio Eustaquio, if any, copy furnished the petitioner, the Court of Appeals, the incumbent Chiefs of the AFP, the PNP and the PNP-CIDG, and all the present respondents before the Court of Appeals.[7]

F. The Court's November 29, 2011 Resolution

On November 2, 2011, we received a letter dated October 28, 2011 from Commissioner Jose Manuel S. Mamauag, Team Leader, CHR Special Investigation Team, requesting photocopies of the following documents:

i. SOI of the officers and enlisted personnel of the 56th IB, 7th ID from January 1, 2004 to June 30, 2007;

ii. SOI of the intelligence operatives who were involved in the ERAP 5 incident; and

iii. SOI of 2Lt. Fernando who was a member of the 56th IB, 7th ID.[8]

In our November 29, 2011 Resolution, we denied the CHR's request considering the confidential nature of the requested documents and because the relevance of these documents to

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[7] *Id.* at 3046; emphases in the original.

[8] *Id.* at 3131.

the present case had not been established. We referred the CHR to our July 5, 2011 Resolution where we pointedly stated that these documents shall be "released exclusively to this Court for our examination to determine their relevance to the present case and the advisability of their public disclosure."[9]

We held that "[w]e see no reason at this time to release these confidential documents since their relevance to the present case has not been established to our satisfaction. It is precisely for this reason that we issued our October 24, 2011 Resolution and directed the CHR to submit to this Court, within thirty (30) days from receipt of the Resolution, a Report with its recommendations of its ongoing investigation of Jonas Burgos' abduction, and the affidavit of Virgilio Eustaquio, if any. Simply stated, it is only after the CHR's faithful compliance with our October 24, 2011 Resolution that we will be able to determine the relevance of the requested documents to the present case."[10]

G. The March 20, 2012 CHR Progress Report and Eustaquio's Affidavit

On March 20, 2012, the CHR submitted its Progress Report detailing its efforts to secure the affidavit of witness Eustaquio in relation with his allegation that one of the male abductors of Jonas, appearing in the cartographic sketch, was among the raiders who abducted him and four others, identified as Jim Cabauatan, Jose Curament, Ruben Dionisio and Dennis Ibona (otherwise known as the "ERAP FIVE"). Attached to this Report is Eustaquio's sworn affidavit dated March 16, 2012, which pertinently stated:

> 1. I was one of the victims in the abduction incident on May 22, 2006 otherwise known as ERAP 5 and because of that, we filed a case with the Ombudsman against Commodore Leonardo Calderon, *et al.*, all then ISAFP elements, docketed as OMB-P-C-06-04050-E for Arbitrary Detention, Unlawful Arrest, Maltreatment of Prisoners, Grave Threats,

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[9] *Id.* at 3131-3132.

[10] *Id.* at 3132.

Incriminatory Machination, and Robbery.

2. On March 16, 2012, I was approached again by the CHR Special Investigation Team regarding the information I have previously relayed to them sometime in September 2010 as to the resemblance of the cartographic sketch of the man as described by the two eyewitnesses Elsa Agasang and Jeffrey Cabintoy in the abduction case of Jonas Burgos;

3. I can say that the male abductor of Jonas Burgos appearing in the cartographic sketch is among the raiders who abducted me and my four other companions because the cartographic sketch almost exactly matched and/or resembled to the cartographic sketch that I also provided and described in relation to the said incident at my rented house in Kamuning, Quezon City on May 22, 2006.

4. I am executing this affidavit voluntarily, freely and attest to the truth of the foregoing.[11]

H. The March 18, 2013 CA Decision

On March 18, 2013, the CA issued its decision pursuant to the Court's July 5, 2011 Resolution referring the *Amparo* and *Habeas Corpus* aspects of the case to the CA for appropriate hearings and ruling on the merits of the petitions.

Petition for Habeas Corpus

The CA held that the issue in the petition for *habeas corpus* is not the illegal confinement or detention of Jonas, but his enforced disappearance. Considering that Jonas was a victim of enforced disappearance, the present case is beyond the ambit of a petition for *habeas corpus.*

Petition for the Writ of Amparo

Based on its finding that Jonas was a victim of enforced disappearance, the CA concluded that the present case falls within the ambit of the Writ of *Amparo.* The CA found that the totality of the evidence supports the petitioner's allegation that the military was involved in the enforced disappearance of Jonas. The CA took note of Jeffrey Cabintoy's positive

[11] *Id.* at 3440.

identification of Lt. Baliaga as one of the abductors who approached him and told him not to interfere because the man being arrested had been under surveillance for drugs; he also remembered the face of Lt. Baliaga – the face he identified in the pictures because he resembles his friend Raven. The CA also held that Lt. Baliaga's alibi and corroborative evidence cannot prevail over Cabintoy's positive identification, considering especially the absence of any indication that he was impelled by hatred or any improper motive to testify against Lt. Baliaga. Thus, the CA held that Lt. Baliaga was responsible and the AFP and the PNP were accountable for the enforced disappearance of Jonas.

Based on these considerations, the CA resolved to:

1) **RECOGNIZING** the abduction of Jonas Burgos as an enforced disappearance covered by the Rule on the Writ of *Amparo*;

2) With regard to authorship,

a) **DECLARING** Maj. Harry A. Baliaga, Jr. **RESPONSIBLE** for the enforced disappearance of Jonas Burgos; and

b) **DECLARING** the Armed Forces of the Philippines and elements of the Armed Forces of the Philippines, particularly the Philippine Army, **ACCOUNTABLE** for the enforced disappearance of Jonas Burgos;

3) **DECLARING** the Philippine National Police **ACCOUNTABLE** for the conduct of an exhaustive investigation of the enforced disappearance of Jonas Burgos. To this end, the PNP through its investigative arm, the PNP-CIDG, is directed to exercise extraordinary diligence to identify and locate the abductors of Jonas Burgos who are still at large and to establish the link between the abductors of Jonas Burgos and those involved in the ERAP 5 incident.

(4) **DIRECTING** the incumbent Chief of Staff of the Armed Forces of the Philippines and the Director General of the Philippine National Police, and their successors, to ensure the continuance of their investigation and coordination on the enforced disappearance of Jonas Burgos until the persons found responsible are brought before the bar of justice;

(5) **DIRECTING** the Commission on Human Rights to continue with its own independent investigation on the enforced disappearance of Jonas Burgos with the same degree of diligence required under the Rule on the Writ of *Amparo*; and

(6) **DIRECTING** the Armed Forces of the Philippines and the Philippine National Police to extend full assistance to the Commission on Human Rights in the conduct of the latter's investigation.

The Chief of Staff, Armed Forces of the Philippines, the Director General, Philippine National Police and the Chairman, Commission on Human Rights are hereby **DIRECTED** to submit a quarterly report to this Court on the results of their respective investigation.

The filing of petitioner's *Affidavit-Complaint* against Maj. Harry A. Baliaga, Jr., *et al*. before the Department of Justice on June 9, 2011 is **NOTED**. Petitioner is **DIRECTED** to immediately inform this Court of any development regarding the outcome of the case.[12]

The Respondent's April 3, 2013 Motion for Partial Reconsideration

The Solicitor General, in behalf of the public respondents (the AFP Chief of Staff and the PNP Director General), filed a motion for partial reconsideration of the March 18, 2013 CA decision. The motion made the following submissions:

5. x x x[T]he Director General, PNP, respectfully takes exception to the Honorable Court's findings that the PNP, specifically the CIDG, "failed to exercise extraordinary diligence in the conduct of its investigation." x x x [T]hat this Honorable Court arrived at a conclusion different from that of the CIDG, or accorded different credence to the statements of the witnesses presented by the parties, does not necessarily translate to the CIDG's failure to exercise extraordinary diligence.

6. The Chief of Staff, AFP also takes exception to the Honorable Court's findings that the "Chief of Staff of the Armed Forces of the

[12] *Id.* at 3601-3602; emphases and italics in the original.

Philippines and the Commanding General should be held accountable for Jonas Burgos disappearance for failing to exercise extraordinary diligence in conducting an internal investigation on the matter. The unwillingness of the respondent officers of the 56th IB to cooperate in the investigation conducted by the CHR is a persuasive proof of the alleged cover up of the military's involvement in the enforced disappearance of Jonas Burgos."

The AFP and the Philippine Army conducted a thorough investigation to determine the veracity of the allegations implicating some of its officers and personnel. After the conduct of the same, it is the conclusion of the Armed Forces of the Philippines and the Philippine Army, based on the evidence they obtained, that Jonas Burgos has never been in custody.

7. The Chief of Staff, AFP, also respectfully takes exception to the finding of the Honorable Court "recognizing the abduction of Jonas Burgos as an enforced disappearance."

x x x x x x x x x

That the Honorable Court found a member of the Philippine Army or even a group of military men to be responsible for the abduction of Jonas Burgos, does not necessarily make the same a case of "enforced disappearance" involving the State. There is dearth of evidence to show that the government is involved. Respondent Baliaga's alleged participation in the abduction and his previous membership in the 56th Infantry Battalion of the Philippine Army, by themselves, do not prove the participation or acquiescence of the State.[13]

I. The CA Resolution dated May 23, 2013

On May 23, 2013, the CA issued its resolution denying the respondents' motion for partial reconsideration. The CA ruled that as far as the PNP was concerned, its failure to elicit leads and information from Cabintoy who witnessed Jonas' abduction is eloquent proof of its failure to exercise extraordinary diligence in the conduct of its investigation. As far as the AFP was concerned, the CA held that the fact that Lt. Baliaga of the Philippine Army was positively identified as one of the abductors of Jonas, coupled with the AFP's lack of serious effort to conduct

[13] *Id.* at 3612-3614.

further investigation, spoke loudly of the AFP leadership's accountability.

To date, the respondents have not appealed to this Court, as provided under Section 19 of the Rule on the Writ of *Amparo*.[14]

J. The Petitioner's Urgent Ex Parte Motion Ex Abundanti Cautela dated April 1, 2013

On April 1, 2013, the petitioner filed an *Ex Parte Motion Ex Abundanti Cautela* asking the Court to: (1) order the persons named in the sealed documents to be impleaded in CA-G.R. SP No. 00008-WA and G.R. No. 183713; (2) issue a writ of *Amparo* on the basis of the newly discovered evidence (the sealed attachment to the motion); and (3) refer the cases to the CA for further hearing on the newly discovered evidence.

The petitioner alleged that she received from a source (who requested to remain anonymous) documentary evidence proving that an intelligence unit of the 7th Infantry Division of the Philippine Army and 56th Infantry Battalion, operating together, captured Jonas on April 28, 2007 at Ever Gotesco Mall, Commonwealth Avenue, Quezon City. This documentary evidence consists of: (1) After Apprehension Report dated April 30, 2007; (2) Psycho Social Processing Report dated April 28, 2007; and (3) Autobiography of Jonas. The petitioner also claimed that these are copies of confidential official reports on file with the Philippine Army.

i. After Apprehension Report dated April 30, 2007

This report is a photocopy consisting of six pages dated April 30, 2007, addressed to the Commanding Officer, 7MIB, 7ID,

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[14] Section 19 of the Rule on the Writ of *Amparo* states:

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

The period of appeal shall be five (5) working days from the date of notice of the adverse judgment.

The appeal shall be given the same priority as in *habeas corpus* cases.

LA, Fort Magsaysay, NE. The report detailed the planning and the objective of apprehending target communist leaders, among them, one *alias* "Ramon" who was captured at Ever Gotesco Mall, Commonwealth, Quezon City on April 28, 2007 by joint elements of the 72 MICO and S2, 56th IB. This report also listed the names of the military personnel belonging to task organization 72 MICO and 56th IB who conducted the operation.

ii. Psycho Social Processing Report dated April 28, 2007

This report details Jonas' abduction and "neutralization"; the results of his interrogation and the intelligence gathered on his significant involvements/activities within the CPP/NPA/NDF organization.

iii. Undated Autobiography

This autobiography narrates how Jonas started as a student activist, his recruitment and eventual ascent in the CPP/NPA as an intelligence officer.

K. The Court's April 11, 2013 Resolution

In our April 11, 2013 Resolution, the Court resolved to require the respondents to Comment on the petitioner's Urgent *Ex Parte Motion Ex Abundanti Cautela* and its attachments, within ten (10) days from receipt of the Resolution. In the same Resolution, the Court:

(1) required BGen. Roa and Lt. Gen. Emmanuel T. Bautista to fully comply with the terms of Section III (i) of the dispositive portion of our July 5, 2011 Resolution within fifteen (15) days from receipt of the resolution;

(2) required Lt. Gen. Emmanuel T. Bautista to submit a written assurance within fifteen (15) days from receipt of the Resolution that the military personnel listed in the submitted *After Apprehension Report* can be located and be served with the processes that the Court may serve;

(3) issued a Temporary Protection Order in favor of the petitioner and all the members of her immediate family;

(4) directed the DOJ and the NBI to provide security and protection to the petitioner and her immediate family and to submit a confidential memorandum on the security arrangements made;

(5) directed the NBI to coordinate and provide direct investigative assistance to the CHR as it may require pursuant to the authority granted under the Court's June 22, 2010 Resolution.[15]

i. The respondents' Comment from the petitioner's *Urgent Ex Parte Motion Ex Abundanti Cautela* dated June 6, 2013

On June 6, 2013, the respondents, through the Office of the Solicitor General, filed their comments on the petitioner's *Urgent Ex Parte Motion Ex Abundanti Cautela*.

First, the respondents alleged that the documents submitted by the petitioner do not exist in the concerned military units' respective records, nor are they in the custody or possession of their respective units. To support their allegations, the respondents submitted the following:

a. Certification dated May 29, 2013 from Maj. Gen. Gregorio Pio P. Catapang, Jr. Commander, 7th Infantry Division, Philippine Army stating that the documents[16] submitted by the petitioner "do not exist nor in the possession/custody of this Headquarters."

b. Certification dated May 29, 2013, from Lt. Col. Louie D.S. Villanueva, Assistant Chief of Staff, Office of the Assistant Chief of Staff for Personnel, G1, 7th Infantry Division, Philippine Army stating that the documents submitted by the petitioner "could not be found nor do they exist in the records of this Command."

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[15] *Rollo*, pp. 3592-3594, Vol. 3; italics ours.

[16] The documents refer to: Psycho-Social Processing Report dated April 28, 2007; After-Apprehension Report dated April 30, 2007; Undated Autobiography of Jonas; and Picture of Jonas.

c. Certification dated May 24, 2013 from Lt. Col. Bernardo M. Ona, Commanding Officer, 56th Infantry Battalion, 7th Infantry Division, Philippine Army stating that the documents submitted by the petitioner "do not exist at this unit."

d. Certification dated May 24, 2013 from 1Lt. Donal S. Frias, Acting Commanding Officer, 72nd Military Intelligence Company, 7th Military Intelligence Battalion, 7th Infantry Division, Philippine Army stating that the documents submitted by the petitioner "do not exist at the records or in the possession of this unit."[17]

The respondents also submitted the affidavits of Lt. Col. Melquiades Feliciano, Maj. Allan M. Margarata and Cpl. Ruby Benedicto, *viz:*

a. In his June 3, 2013 Affidavit, Col. Feliciano stated:

1. That I was assigned as Battalion Commander of 56th Infantry Division, 7th Infantry Division, PA last 17 January 2007 to 17 August 2007.

2. That I was showed a photocopy of the After Apprehension Report dated 30 April 2007 wherein members of 56th IB, 7ID, PA were included therein.

3. I vehemently oppose to (sic) the existence of the said document and the participation of my men listed thereat. There were no military operations that I have authorized or approved regarding Jonas Burgos. The contents thereof are false and utter fabrication of facts.

b. In his May 31, 2013 Affidavit, Maj. Margarata stated:

1. That I was assigned at 72nd Military Intelligence Company (72MICO), 7th Infantry Division, PA from 01 July 2006 to 01 July 2008.

2. That I was showed a photocopy of the Psycho-Social Processing Report dated 28 April 2007 and After Apprehension Report dated 30 April 2007, both of which

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[17] *Rollo*, (no pagination), Vol. 3.

purportedly came from 72MICO, 7th Infantry Division, Philippine Army and that on the last page of the Pyscho-Social Processing Report appears my name therein.

3. I vehemently oppose to (sic) the existence of the said documents and the implication of my name in the said documents. The contents thereof are purely a product of wild imagination. I have never seen such document until now.

4. I can only surmise that these are plainly a fishing expedition on the part of Mrs. Edita Burgos. A ploy to implicate any military personnel especially those belonging to the 7th Infantry Division, Philippine Army.

c. In her May 31, 2013 Affidavit, Cpl. Benedicto stated:

1. That I was never assigned at 72nd Military Intelligence Company, 7th Infantry Division, PA.

2. That I was showed a photocopy of the Psycho-Social Processing Report dated 28 April 2007 and After Apprehension Report dated 30 April 2007, both of which purportedly came from 72MICO, 7th Infantry Division, Philippine Army and that on the last page of the Psycho-Social Processing Report appears my name therein.

3. I vehemently oppose to (sic) the existence of the said documents and the implication of my name in the said documents. The contents thereof are false and utter fabrication of facts. How can I ever be at 72MICO if I was never assigned thereat.

4. I have never been an interrogator in my entire military service. I have never been a member of any operation which involves the name of Jonas Burgos or any other military operation for that matter. I have never seen such document until now.

5. Furthermore, I have never worked with Maj. Allan Margarata or of his unit, 72MICO.[18]

Second, the respondents note that none of the documents submitted by the petitioner were signed; a writ of *Amparo* cannot

[18] *Id.*, (no pagination). Annexes 1-F – 1-H; emphases ours.

be issued and the investigation cannot progress on the basis of false documents and false information.

Lastly, the respondents argue that since the National Bureau of Investigation (*NBI*) and CHR are conducting their own investigations of the case, the petitioner's motion at this point is premature; the proceedings to be conducted by the CA will be at the very least redundant.

ii. The Respondents' Compliance dated June 7, 2013

On June 7, 2013, the respondents, through the Office of Judge Advocate General, complied with our April 11, 2013 Resolution by submitting the following documents:

a. Profile/Summary of Information (SOI) with pictures of the personnel of 56th Infantry Battalion (IB), 69th IB, and 7th Infantry Division, Philippine Army (PA). These documents were submitted by the 7th ID in sealed nine (9) small and three (3) big boxes (total of twelve (12) sealed boxes);

b. Investigation Report of the Intelligence Service, Armed Forces of the Philippines (ISAFP) on the 2007 "*ERAP 5*" incident in Kamuning, Quezon City; Profile/Summary of Information (SOI) with pictures of the Intel Operatives involved in the "*ERAP 5*" incident; and certification issued by the Command Adjutant of ISAFP concerning *T/Sgt. Jason Roxas* (Philippine Army), *Cpl. Maria Joana Francisco* (Philippine Air Force), *M/Sgt. Aron Arroyo* (Philippine Air Force), *an alias T.L.*, all reportedly assigned with the Military Intelligence Group 15 of the Intelligence Service, AFP (MIG 15, ISAFP). These documents were submitted by ISAFP in a sealed envelope;

c. Profile/Summary of Information (SOI) with a picture of 2LT Fernando PA. This document was submitted by Deputy Chief of Staff for Personnel, G1, PA in a sealed envelope;

d. A certification issued by 56IB and 69IB, 7ID, PA concerning captured/surrendered rebels;

e. A certification stating the present location and whereabouts of military personnel listed in the submitted After Apprehension Report, dated April 30, 2007, allegedly identified as members of the Task Organization -72 MICO and 56th IB

with the inclusion of four (4) separate certifications from Commander, 7ID, PA, Office of the Assistant Chief of Staff for Personnel, G1, 7ID, PA, Commanding Officer, 72 MICO, and 56Ib, 71ID, PA, respectively, stating the ***non-existence*** *of the following documents: Psycho-Social Processing Report dated 28 April 2007; After-Apprehension Report dated 30 April 2007; Autobiography of Jonas Burgos; and Picture of Jonas Burgos;*

f. Affidavit of Compliance of General Emmanuel T. Bautista, AFP, the Chief of Staff, assuring that the active military personnel mentioned in the purported apprehension report can be located at their given locations and be served with the processes that may be issued by the Honorable Court.[19]

OUR RULING

A. On the relevancy and disclosure of the documents submitted to this Court per paragraph III(i) of the fallo of our July 5, 2011 Resolution

The directive for the submission of the above-mentioned documents arose from our determination in our June 22, 2010 Resolution that the PNP-CIDG failed to identify the cartographic sketches of two (one male and one female) of the five abductors of Jonas, based on their interview with eyewitnesses to the abduction. For this reason, the Court directly commissioned the CHR to continue the investigation of Jonas' abduction and the gathering of evidence.

Based on its March 15, 2011 Report, the CHR uncovered a lead – a claim made by Eustaquio, Chairman of the Union Masses for Democracy and Justice, that the male abductor of Jonas appearing in the cartographic sketch was among the raiders who abducted him and four others, known as the "ERAP FIVE."

This prompted the CHR to request copies of the documents embodied in par. III(i) of the *fallo* of the Court's July 5, 2011 Resolution from General Gilberto Jose C. Roa of the Office of the Judge Advocate General, AFP. Gen. Roa initially denied

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[19] *Id.*, (no pagination).

this request but eventually complied with the Court's directive of July 5, 2011 to submit the documents *via* the September 23, 2011 Manifestation and Motion and the June 7, 2013 Compliance. In the same July 5, 2011 Resolution, the Court made it plain that these documents shall be released exclusively to the Court for its examination to determine their relevance to the present case and the advisability of their public disclosure.

Pursuant to the Court's October 11, 2011 Resolution, the CHR submitted its March 20, 2012 Progress Report on its continuing investigation of Jonas' abduction. Attached to this Progress Report was Virgilio Eustaquio's sworn affidavit stating that: (1) he was one of the victims of the abduction incident on May 22, 2006, otherwise known as the "ERAP FIVE" incident; (2) as a result of this incident, they filed a case with the Ombudsman against Commodore Leonardo Calderon and other members of the Intelligence Service, AFP (*ISAFP*) for arbitrary detention, unlawful arrest, maltreatment of prisoners, grave threats, incriminatory machination and robbery; and (3) the male abductor of Jonas appearing in the cartographic sketch shown to him by the CHR was among the raiders who abducted him and his four companions because it resembled the cartographic sketch he described in relation to the ERAP FIVE incident on May 22, 2006.

After reviewing the submissions of both the respondents[20] and the CHR[21] pursuant to the Court's July 5, 2011, August 23, 2011 and October 11, 2011 Resolutions, we resolve to grant the CHR access to these requested documents to allow them the opportunity to ascertain the true identities of the persons depicted in the cartographic sketches.

At this point, we emphasize that the sworn affidavit of Eustaquio (that attests to the resemblance of one of Jonas' abductors to the abductors of the ERAP FIVE) constitutes the sought-after

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[20] The respondents' submissions include the September 23, 2011 Manifestation and Motion and the June 7, 2013 Compliance.

[21] CHR Progress Report dated March 20, 2012; *rollo*, pp. 3451-3499, Vol. 3.

missing link that establishes the relevance of the requested documents to the present case. We note that this lead may help the CHR ascertain the identities of those depicted in the cartographic sketches as two of Jonas' abductors (one male and one female) who, to this day, remain unidentified.

In view of the sensitive and confidential nature of the requested documents, we direct the Clerk of Court of the Supreme Court to allow the duly-authorized representatives of the CHR to inspect the requested documents *in camera* within five (5) days from receipt of this Resolution. The documents shall be examined and compared with the cartographic sketches of the two abductors of Jonas, without copying and without bringing the documents outside the premises of the Office of the Clerk of Court of the Supreme Court. The inspection of the documents shall be within office hours and for a reasonable period of time sufficient to allow the CHR to comprehensively investigate the lead provided by Eustaquio.

To fully fulfill the objective of the Rule on the Writ of *Amparo*, further investigation using the standard of extraordinary diligence should be undertaken by the CHR to pursue the lead provided by Eustaquio. We take judicial notice of the ongoing investigation being conducted by the Department of Justice (*DOJ*), through the NBI, on the disappearance of Jonas.[22] In this regard, we direct the NBI to coordinate and provide direct investigative assistance to the CHR as the latter may require, pursuant to the authority granted under the Court's June 22, 2010 Resolution.

For this purpose, we require the CHR to submit a supplemental investigation report to the DOJ, copy furnished the petitioner, the NBI, the incumbent Chiefs of the AFP, the PNP and the PNP-CIDG, and all the respondents within sixty days (60) days from receipt of this Resolution.

B. On the* Urgent *Ex Parte* Motion *Ex Abundanti Cautela

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[22] See Christine O. Avendano and TJ Burgonio, *New NBI Probe to lead to truth behind Burgos' disappearance-De Lima*, Philippine Daily Inquirer, April 4, 2013.

After reviewing the newly discovered evidence submitted by the petitioner and considering all the developments of the case, including the March 18, 2013 CA decision that confirmed the validity of the issuance of the Writ of *Amparo* in the present case, we resolve to deny the petitioner's Urgent *Ex Parte* Motion *Ex Abundanti Cautela*.

We note and conclude, based on the developments highlighted above, that the beneficial purpose of the Writ of *Amparo* has been served in the present case. As we held in *Razon, Jr. v. Tagitis*,[23] the writ merely embodies the Court's directives **to police agencies to undertake specified courses of action** to address the enforced disappearance of an individual. The Writ of *Amparo* serves both a *preventive* and a *curative* role. It is *curative* as it facilitates the subsequent punishment of perpetrators through the investigation and remedial action that it directs.[24] The focus is on procedural curative remedies rather than on the tracking of a specific criminal or the resolution of administrative liabilities. The unique nature of *Amparo* proceedings has led us to define terms or concepts specific to what the proceedings seek to achieve. In *Razon Jr., v. Tagitis*,[25] we defined what the terms "responsibility" and "accountability" signify in an *Amparo* case. We said:

> **Responsibility** refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced

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[23] G.R. No. 182498, December 3, 2009, 606 SCRA 598.

[24] *Secretary of Defense v. Manalo*, 589 Phil. 1, 41 (2008).

[25] *Supra* note 23.

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.[26]

In the present case, while Jonas remains missing, the series of calculated directives issued by the Court outlined above and the extraordinary diligence the CHR demonstrated in its investigations resulted in the criminal prosecution of Lt. Baliaga. We take judicial notice of the fact that the Regional Trial Court, Quezon City, Branch 216, has already found probable cause for arbitrary detention against Lt. Baliaga and has ordered his arrest in connection with Jonas' disappearance.[27]

We also emphasize that the CA in its March 18, 2013 decision **already ruled with finality** on the entities responsible and accountable (as these terms are defined in *Razon, Jr. v. Tagitis*) for the enforced disappearance of Jonas. In its March 18, 2013 decision, the CA found, by substantial evidence, that Lt. Baliaga participated in the abduction on the basis of Cabintoy's positive identification that he was one of the abductors of Jonas who told him not to interfere because the latter had been under surveillance for drugs. In the same Decision, the CA also held the AFP and the PNP accountable for having failed to discharge the burden of extraordinary diligence in the investigation of the enforced disappearance of Jonas. Thus, the CA issued the following directives to address the enforced disappearance of Jonas:

(1) DIRECT the PNP through its investigative arm, the PNP-CIDG, to identify and locate the abductors of Jonas Burgos who are still at large and to establish the link between the abductors of Jonas Burgos and those involved in the ERAP 5 incident;

(2) DIRECT the incumbent Chief of Staff of the Armed Forces of the Philippines and the Director General of the Philippines (sic) National Police, and their successors, to ensure the

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[26] *Id.* at 620-621; emphases supplied.

[27] See Jeanette I. Andrade and Nikko Dizon, *Court orders arrest of Army Major in Jonas Burgos Abduction,* Philippine Daily Inquirer, October 22, 2013.

continuance of their investigation and coordination on the enforced disappearance of Jonas Burgos until the persons found responsible are brought before the bar of justice;

(3) DIRECT the Commission on Human Rights to continue with its own independent investigation on the enforced disappearance of Jonas Burgos with the same degree of diligence required under the Rule on the Writ of *Amparo*;

(4) DIRECT the Armed Forces of the Philippines and the Philippine National Police to extend full assistance to the Commission on Human Rights in the conduct of the latter's investigation; and

(5) DIRECT the Chief of Staff, Armed Forces of the Philippines, the Director General, Philippine National Police and the Chairman, Commission on Human Rights to submit a quarterly report to the Court on the results of their respective investigation.[28]

We note that the respondents did not appeal the March 18, 2013 CA decision and the May 23, 2013 CA resolution denying their motion for partial reconsideration**.**

Based on the above considerations, in particular, the final ruling of the CA that confirmed the validity of the issuance of the Writ of *Amparo* and its determination of the entities responsible for the enforced disappearance of Jonas, we resolve to deny the petitioner's prayer to issue the writ of *Amparo* anew and to refer the case to the CA based on the newly discovered evidence. We so conclude as the petitioner's request for the reissuance of the writ and for the rehearing of the case by the CA would be redundant and superfluous in light of: (1) the ongoing investigation being conducted by the DOJ through the NBI; (2) the CHR investigation directed by the Court in this Resolution; and (3) the continuing investigation directed by the CA in its March 18, 2013 decision.

We emphasize that while the Rule on the Writ of *Amparo* accords the Court a wide latitude in crafting remedies to address an enforced disappearance, it cannot (without violating the nature

[28] *Rollo,* p. 3601.

of the writ of *Amparo* as a summary remedy that provides rapid judicial relief) grant remedies that would complicate and prolong rather than expedite the investigations already ongoing. Note that the CA has already determined with finality that Jonas was a victim of enforced disappearance.

We clarify that by denying the petitioner's motion, we do not thereby rule on the admissibility or the merits of the newly discovered evidence submitted by the petitioner. We likewise do not foreclose any investigation by the proper investigative and prosecutory agencies of the other entities whose identities and participation in the enforced disappearance of Jonas may be disclosed in future investigations and proceedings. Considering that the present case has already reached the prosecution stage, the petitioner's motion should have been filed with the proper investigative and prosecutory agencies of the government.

To expedite proceedings, we refer the petitioner's motion, this Resolution and its covered cases to the DOJ for investigation, *for the purpose of filing the appropriate criminal charges* in the proper courts against the proper parties, if warranted, based on the gathered evidence. For this purpose, we direct the petitioner to furnish the DOJ and the NBI copies of her Urgent *Ex Parte* Motion *Ex Abundanti Cautela*, together with the sealed attachments to the Motion, within five (5) days from receipt of this Resolution.

As mentioned, we take judicial notice of the ongoing investigation by the DOJ, through the NBI, of the disappearance of Jonas. This DOJ investigation is without prejudice to the Office of the Ombudsman's exercise of its primary jurisdiction over the investigation of the criminal aspect of this case should the case be determined to be cognizable by the Sandiganbayan.[29]

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[29] *See* Section 15 (1) of the Ombudsman Act of 1989 which provides:

The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or

As we direct below, further investigation for purposes of the present proceedings shall continue to be undertaken by the CHR, in close coordination with the NBI, for the completion of the investigation under the terms of our June 22, 2010 Resolution and the additional directives under the present Resolution.

As a final note, we emphasize that our ROLE in a writ of *Amparo* proceeding is merely to determine whether an enforced disappearance has taken place; to determine who is responsible or accountable; and to define and impose the appropriate remedies to address the disappearance.

As shown above, the beneficial purpose of the Writ of *Amparo* has been served in the present case with the CA's final determination of the persons responsible and accountable for the enforced disappearance of Jonas and the commencement of criminal action against Lt. Baliaga. At this stage, criminal, investigation and prosecution proceedings are already beyond the reach of the Writ of *Amparo* proceeding now before us.

Based on the above developments, we now hold that the full extent of the remedies envisioned by the Rule on the Writ of *Amparo* has been served and exhausted.

Considering the foregoing, the Court **RESOLVES** to:

(1) **DENY** petitioner Edita Burgos' Urgent *Ex Parte* Motion *Ex Abundanti Cautela;*

(2) **REFER** the petitioner's Urgent *Ex Parte* Motion *Ex*

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inefficient. **It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.**

See also *Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice*, G.R. No. 159747, April 13, 2004, 427 SCRA 46, 70, where the Court held that the "DOJ Panel is not precluded from conducting any investigation of cases against public officers involving violations of penal laws but if the cases fall under the exclusive jurisdiction of the Sandiganbayan, then respondent Ombudsman may, in the exercise of its primary jurisdiction take over at any stage."

Abundanti Cautela, this Resolution and its covered cases to the Department of Justice for investigation *for the purpose of filing the appropriate criminal charges* in the proper courts against the proper parties if such action is warranted by the gathered evidence. The referral to the Department of Justice is without prejudice to the Office of the Ombudsman's exercise of its primary jurisdiction over the investigation should the case be determined to be cognizable by the Sandiganbayan;

(3) **DIRECT** the petitioner to furnish the Department of Justice and the National Bureau of Investigation copies of her Urgent *Ex Parte* Motion *Ex Abundanti Cautela*, together with the sealed attachments to the Motion, within five (5) days from receipt of this Resolution;

(4) **DIRECT** the Clerk of Court of the Supreme Court to allow the duly-authorized representatives of the Commission on Human Rights to inspect the requested documents *in camera* within five (5) days from receipt of this Resolution. For this purpose, the documents shall be examined and compared with the cartographic sketches of the two abductors of Jonas Burgos without copying and bringing the documents outside the premises of the Office of the Clerk of Court of the Supreme Court.The inspection of the documents shall be conducted within office hours and for a reasonable period of time that would allow the Commission on Human Rights to comprehensively investigate the lead provided by Virgilio Eustaquio;

(5) **DIRECT** the National Bureau of Investigation to coordinate and provide direct investigative assistance to the Commission on Human Rights as the latter may require, pursuant to the authority granted under the Court's June 22, 2010 Resolution.

(6) **REQUIRE** the Commission on Human Rights to submit a supplemental investigation report to the Department of Justice, copy furnished the petitioner, the National

Bureau of Investigation, the incumbent Chiefs of the Armed Forces of the Philippines, the Philippine National Police and the Philippine National Police-Criminal Investigation and Detection Group, and all the respondents, within sixty (60) days from receipt of this Resolution.

(7) **DECLARE** this Writ of *Amparo* proceeding closed and terminated, without prejudice to the concerned parties' compliance with the above directives and subject to the Court's continuing jurisdiction to enforce compliance with this Resolution.

SO ORDERED.

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

EN BANC

[G.R. No. 193462. February 4, 2014]

DENNIS A.B. FUNA, *petitioner, vs.* **MANILA ECONOMIC AND CULTURAL OFFICE and the COMMISSION ON AUDIT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; SUPERVENING EVENT THAT RENDERED THE PETITION FOR *MANDAMUS* MOOT AND ACADEMIC, PRESENT.— A case is deemed moot and academic when, by reason of the occurrence of a supervening event, it ceases to present any justiciable controversy. Since they lack an actual controversy otherwise cognizable by courts, moot cases are, as a rule,

dismissible. x x x In this case, We find that the issuance by the COA of *Office Order No. 2011*-698 indeed qualifies as a supervening event that effectively renders moot and academic the main prayer of the instant *mandamus* petition. A writ of *mandamus* to compel the COA to audit the accounts of the MECO would certainly be a mere superfluity, when the former had already obliged itself to do the same.

2. ID.; ID.; ID.; ID.; EXCEPTIONS TO THE RULE THAT REQUIRES DISMISSAL OF MOOT CASES, APPLIED.— Be that as it may, this Court refrains from dismissing outright the petition. We believe that the *mandamus* petition was able to craft substantial issues presupposing the **commission of a grave violation of the Constitution** and involving **paramount public interest**, which need to be resolved nonetheless: *First*. The petition makes a serious allegation that the COA had been remiss in its constitutional or legal duty to audit and examine the accounts of an otherwise auditable entity in the MECO. *Second*. There is paramount public interest in the resolution of the issue concerning the failure of the COA to audit the accounts of the MECO. The propriety or impropriety of such a refusal is determinative of whether the COA was able to faithfully fulfill its constitutional role as the guardian of the public treasury, in which any citizen has an interest. *Third*. There is also paramount public interest in the resolution of the issue regarding the legal status of the MECO; a novelty insofar as our jurisprudence is concerned. We find that the status of the MECO—whether it may be considered as a government agency or not—has a direct bearing on the country's commitment to the *One China* policy of the PROC. An allegation as serious as a violation of a constitutional or legal duty, coupled with the pressing public interest in the resolution of all related issues, prompts this Court to pursue a definitive ruling thereon, if not for the proper guidance of the government or agency concerned, then **for the formulation of controlling principles for the education of the bench, bar and the public in general**. For this purpose, the Court invokes its *symbolic function*.

3. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE COURT SUSTAINS THE LEGAL STANDING OF A PARTY AS A CONCERNED CITIZEN TO FILE A PETITION FOR *MANDAMUS* THAT RAISES ISSUES OF TRANSCENDENTAL IMPORTANCE.—

We rule that the instant petition raises issues of **transcendental importance**, involved as they are with the performance of a constitutional duty, allegedly neglected, by the COA. Hence, We hold that the petitioner, as a concerned citizen, has the requisite legal standing to file the instant *mandamus* petition. To be sure, petitioner does not need to make any prior demand on the MECO or the COA in order to maintain the instant petition. The duty of the COA sought to be compelled by *mandamus*, emanates from the Constitution and law, which explicitly require, or "*demand*," that it perform the said duty. To the mind of this Court, petitioner already established his cause of action against the COA when he alleged that the COA had neglected its duty in violation of the Constitution and the law.

4. REMEDIAL LAW; COURTS; PRINCIPLE OF HIERARCHY OF COURTS; THE COURT WAIVES THE APPLICATION OF THE PRINCIPLE IN VIEW OF THE TRANSCENDENTAL IMPORTANCE OF THE ISSUES RAISED IN THE PETITION FOR *MANDAMUS*.— The last preliminary issue is concerned with the petition's non-observance of the principle of hierarchy of courts. The COA assails the filing of the instant *mandamus* petition directly with this Court, when such petition could have very well been presented, at the first instance, before the Court of Appeals or any Regional Trial Court. The COA claims that the petitioner was not able to provide compelling reasons to justify a direct resort to the Supreme Court. In view of the **transcendental importance** of the issues raised in the *mandamus* petition, as earlier mentioned, this Court waives this last procedural issue in favor of a resolution on the merits.

5. COMMERCIAL LAW; CORPORATIONS; THE MANILA ECONOMIC AND CULTURAL OFFICE (MECO) IS ORGANIZED AS A NON-STOCK CORPORATION.— The organization of the MECO as a non-stock corporation cannot at all be denied. Records disclose that the MECO was incorporated as a non-stock corporation under the Corporation Code on 16 December 1977. The incorporators of the MECO were Simeon R. Roxas, Florencio C. Guzon, Manuel K. Dayrit, Pio K. Luz and Eduardo B. Ledesma, who also served as the corporation's original members and directors. x x x The purposes for which the MECO was organized are somewhat analogous to those of a *trade, business or industry chamber*,

but only on a much larger scale *i.e.*, instead of furthering the interests of a particular line of business or industry within a local sphere, the MECO seeks to promote the general interests of the Filipino people in a foreign land.

6. ID.; ID.; ID.; MECO PERFORMS FUNCTIONS WITH A PUBLIC ASPECT.— The public character of the functions vested in the MECO cannot be doubted either. Indeed, to a certain degree, the functions of the MECO can even be said to partake of the nature of *governmental* functions. As earlier intimated, it is the MECO that, on behalf of the people of the Philippines, currently facilitates unofficial relations with the people in Taiwan. Consistent with its corporate purposes, the MECO was "*authorized*" by the Philippine government to perform certain "*consular and other functions*" relating to the promotion, protection and facilitation of Philippine interests in Taiwan. x x x The functions of the MECO, in other words, are of the kind that would otherwise be performed by the Philippines' own diplomatic and consular organs, if not only for the government's acquiescence that they instead be exercised by the MECO. Evidently, the functions vested in the MECO are impressed with a public aspect.

7. ID.; ID.; ID.; MECO IS NOT OWNED OR CONTROLLED BY THE GOVERNMENT.— Organization as a non-stock corporation and the mere performance of functions with a public aspect, however, are not by themselves sufficient to consider the MECO as a GOCC. In order to qualify as a GOCC, a corporation must also, if not more importantly, be owned by the government. x x x In a non-stock corporation, like the MECO, jurisprudence teaches that the controlling interest of the government is affirmed when "*at least majority of the members are government officials holding such membership by appointment or designation*" or there is otherwise "*substantial participation of the government in the selection*" of the corporation's governing board. x x x The fact of the incorporation of the MECO under the Corporation Code is key. The MECO was correct in postulating that, as a corporation organized under the Corporation Code, it is governed by the appropriate provisions of the said code, its articles of incorporation and its by-laws. In this case, it is the *by-laws* of the MECO that stipulates that its directors are elected by its members; its officers are elected by its directors; and its members, other than

the original incorporators, are admitted by way of a unanimous board resolution. It is significant to note that *none* of the original incorporators of the MECO were shown to be government officials at the time of the corporation's organization. Indeed, none of the members, officers or board of directors of the MECO, from its incorporation up to the present day, were established as government appointees or public officers designated by reason of their office. There is, in fact, no law or executive order that authorizes such an appointment or designation. Hence, from a strictly legal perspective, it appears that the presidential "*desire letters*" pointed out by petitioner—if such letters even exist outside of the case of Mr. Basilio—are, no matter how strong its persuasive effect may be, merely recommendatory.

8. ID.; ID.; ID.; MECO IS NOT A GOVERNMENT INSTRUMENTALITY; IT IS A *SUI GENERIS* ENTITY.— The categorical exclusion of the MECO from a GOCC makes it easier to exclude the same from any other class of government instrumentality. The other government instrumentalities *i.e.*, the regulatory agencies, chartered institutions and GCE/GICP are all, by explicit or implicit definition, creatures of the law. The MECO cannot be any other instrumentality because it was, as mentioned earlier, merely incorporated under the Corporation Code. x x x [F]rom the peculiar circumstances surrounding its incorporation, that the MECO was not intended to operate as any other ordinary corporation. And it is not. Despite its private origins, and perhaps deliberately so, the MECO was "*entrusted*" by the government with the "*delicate and precarious*" responsibility of pursuing "*unofficial*" relations with the people of a foreign land whose government the Philippines is bound not to recognize. The intricacy involved in such undertaking is the possibility that, at any given time in fulfilling the purposes for which it was incorporated, the MECO may find itself engaged in dealings or activities that can directly contradict the Philippines' commitment to the *One China* policy of the PROC. Such a scenario can only truly be avoided if the executive department exercises some form of oversight, no matter how limited, over the operations of this otherwise private entity. Indeed, from hindsight, it is clear that the MECO is uniquely situated as compared with other private corporations. From its over-reaching corporate objectives, its

special duty and authority to exercise certain consular functions, up to the oversight by the executive department over its operations—**all the while maintaining its legal status as a non-governmental entity**—the MECO is, for all intents and purposes, *sui generis*.

9. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; *"VERIFICATION FEES"* AND *"CONSULAR FEES"* COLLECTED BY MECO SHOULD BE AUDITED BY THE COMMISSION ON AUDIT.— Section 14(1), Book V of the Administrative Code authorizes the COA to audit accounts of non-governmental entities "*required to pay xxx or have government share*" but only with respect to "*funds xxx coming from or through the government*." x x x [T]he 27 February 2008 Memorandum of Agreement between the DOLE and the MECO and Section 2(6) of EO No. 15, s. 2001, *vis-à-vis*, respectively, the "*verification fees*" and the "*consular fees*," grant and at the same time limit the authority of the MECO to collect such fees. That grant and limit require the audit by the COA of the collections thereby generated. x x x The MECO is not a GOCC or government instrumentality. It is a *sui generis* private entity especially entrusted by the government with the facilitation of unofficial relations with the people in Taiwan without jeopardizing the country's faithful commitment to the *One China* policy of the PROC. However, despite its non-governmental character, the MECO handles government funds in the form of the "*verification fees*" it collects on behalf of the DOLE and the "*consular fees*" it collects under Section 2(6) of EO No. 15, s. 2001. Hence, under existing laws, the accounts of the MECO pertaining to its collection of such "*verification fees*" and "*consular fees*" should be audited by the COA.

APPEARANCES OF COUNSEL

Funa Balayan Fortes Galandines & Villagonzalo Law Offices for petitioner.

Eduardo J. Berenguer Manuel C. Fausto, Jr. and Charles Ian O. Saturnino for MECO.

D E C I S I O N

PEREZ, *J.*:

This is a petition for *mandamus*[1] to compel:

1.) the Commission on Audit (COA) to audit and examine the funds of the Manila Economic and Cultural Office (MECO), *and*

2.) the MECO to submit to such audit and examination.

The antecedents:

Prelude

The aftermath of the Chinese civil war[2] left the country of China with two (2) governments in a stalemate espousing competing assertions of sovereignty.[3] On one hand is the communist People's Republic of China (PROC) which controls the mainland territories, and on the other hand is the nationalist

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[1] Under Rule 65 of the Rules of Court; *rollo*, pp. 3-89.

[2] Refers to the war fought between the forces loyal to the government of the Republic of China (ROC) and the Communist Party of China (CPC), from 1927 to 1936 and 1946 to 1949. The war reached its defining point in 1949, when the CPC—buoyed by significant military victories—was able to wrest control of the mainland territories from the ROC. On 1 October 1949, Mao Zedong, leader of the CPC, proclaimed the birth of a new Chinese state, the *People's Republic of China* (PROC). On the other hand, the remaining loyalists of the ROC government, led by Chiang Kai Shek and the *Kuomintang* party, escaped the mainland and relocated to the island of Taiwan. In December 1949, Chiang Kai Shek declared the continued sovereignty of the ROC over China and designated the city of Taipei in Taiwan as its temporary capital. Subsequently, in 1955, the ROC and the United States of America entered into the *Sino-American Mutual Defense Treaty* that essentially deterred the CPC from launching any significant attempt of seizing Taiwan from the ROC. A cessation of hostilities between the CPC and ROC forces then followed, and eventually prevailed, although an official agreement ending the civil war between the two belligerents had never been forged.

[3] D' Amato, Anthony, *Purposeful Ambiguity as International Legal Strategy: The Two China Problem*, 2010; (http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/94).

Republic of China (ROC) which controls the island of Taiwan. For a better part of the past century, both the PROC and ROC adhered to a policy of "*One China*" *i.e.*, the view that there is only one legitimate government in China, but differed in their respective interpretation as to which that government is.[4]

With the existence of two governments having conflicting claims of sovereignty over one country, came the question as to which of the two is deserving of recognition as that country's legitimate government. Even after its relocation to Taiwan, the ROC used to enjoy diplomatic recognition from a majority of the world's states, partly due to being a founding member of the United Nations (UN).[5] The number of states partial to the PROC's version of the *One China* policy, however, gradually increased in the 1960s and 70s, most notably after the UN General Assembly adopted the monumental *Resolution 2758* in 1971.[6] Since then, almost all of the states that had erstwhile recognized the ROC as the legitimate government of China, terminated their official relations with the said government, in favor of establishing diplomatic relations with the PROC.[7] The Philippines is one of such states.

The Philippines formally ended its official diplomatic relations with the government in Taiwan on 9 June 1975, when the country and the PROC expressed mutual recognition thru the *Joint Communiqué of the Government of the Republic of the Philippines and the Government of the People's Republic*

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[4] Benson, Brett V. and Niou, Emerson M.S., *Comprehending Strategic Ambiguity: US Security Commitment to Taiwan*, 2001.

[5] Jumamil-Mercado, Gloria, *Philippine-Taiwan Relations in a One China Policy: An Analysis of the Changing Relational Pattern*, 2007.

[6] On 25 October 1971, the UN General Assembly passed *Resolution 2758* expelling the "*representatives of Chiang Kai Shek*" from the UN and giving recognition to the representatives of the PROC as the "*only legitimate representatives of China.*" In passing such resolution, the UN General Assembly, in substance, considered the PROC as the lawful *successor state* of the ROC.

[7] Jumamil-Mercado, Gloria, *Philippine-Taiwan Relations in a One China Policy: An Analysis of the Changing Relational Pattern*, 2007.

of China (Joint Communiqué).[8]

Under the Joint Communiqué, the Philippines categorically stated its adherence to the *One China* policy of the PROC. The pertinent portion of the Joint Communiqué reads:[9]

> The Philippine Government recognizes the **Government of the People's Republic of China as the sole legal government of China**, fully understands and respects the position of the Chinese Government that there is but **one China and that Taiwan is an integral part of Chinese territory**, and **decides to remove all its official representations from Taiwan within one month from the date of signature of this communiqué**. (Emphasis supplied)

The Philippines' commitment to the *One China* policy of the PROC, however, did not preclude the country from keeping *unofficial* relations with Taiwan on a "*people-to-people*" basis.[10] Maintaining ties with Taiwan that is permissible by the terms of the Joint Communiqué, however, necessarily required the Philippines, and Taiwan, to course any such relations thru offices outside of the *official* or governmental organs.

Hence, despite ending their diplomatic ties, the people of Taiwan and of the Philippines maintained an unofficial relationship facilitated by the offices of the Taipei Economic and Cultural Office, for the former, and the MECO, for the latter.[11]

The MECO[12] was organized on 16 December 1997 as a non-stock, non-profit corporation under Batas Pambansa Blg.

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[8] A copy of the document may be accessed in the Department of Foreign Affairs official website under the link: https://www.dfa.gov.ph/treaty/scanneddocs/580.pdf.

[9] *Id.*

[10] Third Whereas clause of Executive Order No. 4, s. 1998; Third Whereas clause of Executive Order No. 490, s 1998; Third Whereas clause of Executive Order No. 15, s. 2001.

[11] Third Whereas clause of Executive Order No. 15, s. 2001.

[12] Originally known as Asian Exchange Center, Incorporated (AECI). On 1 January 1993, AECI amended its articles of incorporation and adopted the name Manila Economic and Cultural Office (MECO).

68 or the Corporation Code.[13] The purposes underlying the incorporation of MECO, as stated in its articles of incorporation,[14] are as follows:

1. **To establish and develop the commercial and industrial interests of Filipino nationals here and abroad, and assist on all measures designed to promote and maintain the trade relations of the country with the citizens of other foreign countries**;
2. To receive and accept grants and subsidies that are reasonably necessary in carrying out the corporate purposes provided they are not subject to conditions defeatist for or incompatible with said purpose;
3. To acquire by purchase, lease or by any gratuitous title real and personal properties as may be necessary for the use and need of the corporation, and to dispose of the same in like manner when they are no longer needed or useful; and
4. To do and perform any and all acts which are deemed reasonably necessary to carry out the purposes. (Emphasis supplied)

From the moment it was incorporated, the MECO became the corporate entity "*entrusted*" by the Philippine government with the responsibility of fostering "*friendly*" and "*unofficial*" relations with the people of Taiwan, particularly in the areas of trade, economic cooperation, investment, cultural, scientific and educational exchanges.[15] To enable it to carry out such responsibility, the MECO was "*authorized*" by the government to perform certain "*consular and other functions*" that relates to the promotion, protection and facilitation of Philippine interests in Taiwan.[16]

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[13] *See* Fourth Whereas clause of Executive Order No. 490, s. 1998.

[14] *Rollo*, pp. 100-102.

[15] *See* First, Sixth and Seventh Whereas clause of Executive Order No. 931, s. 1984; First Whereas clause of Executive Order No. 490, s. 1998; Fifth Whereas clause of Executive Order No. 15, s. 2001.

[16] Executive Order No. 15 s. 2001.

At present, it is the MECO that oversees the rights and interests of Overseas Filipino Workers (OFWs) in Taiwan; promotes the Philippines as a tourist and investment destination for the Taiwanese; and facilitates the travel of Filipinos and Taiwanese from Taiwan to the Philippines, and *vice versa*.[17]

Facts Leading to the Mandamus Petition

On 23 August 2010, petitioner sent a letter[18] to the COA requesting for a "*copy of the latest financial and audit report*" of the MECO invoking, for that purpose, his "*constitutional right to information on matters of public concern*." The petitioner made the request on the belief that the MECO, being under the "*operational supervision*" of the Department of Trade and Industry (DTI), is a government owned and controlled corporation (GOCC) and thus subject to the audit jurisdiction of the COA.[19]

Petitioner's letter was received by COA Assistant Commissioner Jaime P. Naranjo, the following day.

On 25 August 2010, Assistant Commissioner Naranjo issued a *memorandum*[20] referring the petitioner's request to COA Assistant Commissioner Emma M. Espina for "*further disposition*." In this *memorandum*, however, Assistant Commissioner Naranjo revealed that the MECO was "*not among the agencies audited by any of the three Clusters of the Corporate Government Sector*."[21]

On 7 September 2010, petitioner learned about the 25 August 2010 *memorandum* and its contents.

Mandamus Petition

Taking the 25 August 2010 *memorandum* as an admission that the COA had never audited and examined the accounts of

[17] *Id.*

[18] *Rollo*, p. 90.

[19] *Id.*

[20] *Id.* at 91.

[21] *Id.*

the MECO, the petitioner filed the instant petition for *mandamus* on 8 September 2010. Petitioner filed the suit in his capacities as "*taxpayer, concerned citizen, a member of the Philippine Bar and law book author*."[22] He impleaded both the COA and the MECO.

Petitioner posits that by failing to audit the accounts of the MECO, the COA is neglecting its duty under Section 2(1), Article IX-D of the Constitution to audit the accounts of an otherwise *bona fide* GOCC or government instrumentality. It is the adamant claim of the petitioner that the MECO is a GOCC *without* an original charter or, at least, a government instrumentality, the funds of which partake the nature of public funds.[23]

According to petitioner, the MECO possesses all the essential characteristics of a GOCC and an instrumentality under the Executive Order No. (EO) 292, s. 1987 or the Administrative Code: it is a non-stock corporation *vested with governmental functions relating to public needs*; it is *controlled by the government thru a board of directors appointed by the President of the Philippines*; and while not integrated within the executive departmental framework, it is nonetheless *under the operational and policy supervision of the DTI*.[24] As petitioner substantiates:

1. The MECO is vested with government functions. It performs functions that are equivalent to those of an embassy or a consulate of the Philippine government.[25] A reading of the authorized functions of the MECO as found in EO No. 15, s. 2001, reveals that they are substantially the same functions performed by the Department of Foreign Affairs (DFA), through its diplomatic and consular missions, per the Administrative Code.[26]

[22] Petition for *Mandamus*; *id.* at 7.

[23] *Id.* at 23-46.

[24] *Id.*

[25] *Id.* at 38-43.

[26] *Id.*

2. The MECO is controlled by the government. It is the President of the Philippines that actually appoints the directors of the MECO, albeit *indirectly*, by way of "*desire letters*" addressed to the MECO's board of directors.[27] An illustration of this exercise is the assumption by Mr. Antonio Basilio as chairman of the board of directors of the MECO in 2001, which was accomplished when former President Gloria Macapagal-Arroyo, through a memorandum[28] dated 20 February 2001, expressed her "*desire*" to the board of directors of the MECO for the election of Mr. Basilio as chairman.[29]

3. The MECO is under the operational and policy supervision of the DTI. The MECO was placed under the operational supervision of the DTI by EO No. 328, s. of 2004, and again under the policy supervision of the same department by EO No. 426, s. 2005.[30]

To further bolster his position that the accounts of the MECO ought to be audited by the COA, the petitioner calls attention to the practice, allegedly prevailing in the United States of America, wherein the American Institute in Taiwan (AIT)—the counterpart entity of the MECO in the United States—is supposedly audited by that country's Comptroller General.[31] Petitioner claims that this practice had been confirmed in a decision of the United States Court of Appeals for the District of Columbia Circuit, in the case of *Wood, Jr., ex rel. United States of America v. The American Institute in Taiwan, et al.*[32]

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[27] *Id.* at 34-37.

[28] *Id.* at 129.

[29] *Id.* at 34-37.

[30] *Id.* at 37-38.

[31] *Id.* at 69-85.

[32] 286 F.3d 526 (D.C. Cir. 2002).

The Position of the MECO

The MECO prays for the dismissal of the *mandamus* petition on procedural and substantial grounds.

On procedure, the MECO argues that the *mandamus* petition was prematurely filed.[33]

The MECO posits that a cause of action for *mandamus* to compel the performance of a ministerial duty required by law only ripens once there has been a refusal by the tribunal, board or officer concerned to perform such a duty.[34] The MECO claims that there was, in this case, no such refusal either on its part or on the COA's because the petitioner never made any demand for it to submit to an audit by the COA or for the COA to perform such an audit, prior to filing the instant *mandamus* petition.[35] The MECO further points out that the only "demand" that the petitioner made was his request to the COA for a copy of the MECO's latest financial and audit report—which request was not even finally disposed of by the time the instant petition was filed.[36]

On the petition's merits, the MECO denies the petitioner's claim that it is a GOCC or a government instrumentality.[37] While performing public functions, the MECO maintains that it is not owned or controlled by the government, and its funds are private funds.[38] The MECO explains:

1. It is *not* owned or controlled by the government. Contrary to the allegations of the petitioner, the President of the Philippines does not appoint its board of directors.[39] The "*desire letter*" that the President transmits is merely

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[33] Memorandum of the MECO; *rollo*, pp. 730-738.

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.* at 739-764.

[38] *Id.*

[39] *Id.* at 744-753.

recommendatory and not binding on the corporation.[40] As a corporation organized under the Corporation Code, matters relating to the election of its directors and officers, as well as its membership, are governed by the appropriate provisions of the said code, its articles of incorporation and its by-laws.[41] Thus, it is the directors who elect the corporation's officers; the members who elect the directors; and the directors who admit the members by way of a unanimous resolution. All of its officers, directors, and members are private individuals and are not government officials.[42]

2. The government merely has *policy* supervision over it. Policy supervision is a lesser form of supervision wherein the government's oversight is limited only to ensuring that the corporation's activities are in tune with the country's commitments under the *One China* policy of the PROC.[43] The day-to-day operations of the corporation, however, remain to be controlled by its duly elected board of directors.[44]

The MECO emphasizes that categorizing it as a GOCC or a government instrumentality can potentially violate the country's commitment to the *One China* policy of the PROC.[45] Thus, the MECO cautions against applying to the present *mandamus* petition the pronouncement in the *Wood* decision regarding the alleged auditability of the AIT in the United States.[46]

The Position of the COA

The COA, on the other hand, advances that the *mandamus* petition ought to be dismissed on procedural grounds and on

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.* at 743-754.

[44] *Id.*

[45] *Id.* at 768.

[46] *Id.* at 763-765.

the ground of mootness.

The COA argues that the *mandamus* petition suffers from the following procedural defects:

1. The petitioner lacks *locus standi* to bring the suit. The COA claims that the petitioner has not shown, at least in a concrete manner, that he had been aggrieved or prejudiced by its failure to audit the accounts of the MECO.[47]

2. The petition was filed in violation of the doctrine of hierarchy of courts. The COA faults the filing of the instant *mandamus* petition directly with this Court, when such petition could have very well been presented, at the first instance, before the Court of Appeals or any Regional Trial Court.[48] The COA claims that the petitioner was not able to provide compelling reasons to justify a direct resort to the Supreme Court.[49]

At any rate, the COA argues that the instant petition already became *moot* when COA Chairperson Maria Gracia M. Pulido-Tan (Pulido-Tan) issued *Office Order No. 2011-698*[50] on 6 October 2011.[51] The COA notes that under *Office Order No. 2011-698*, Chairperson Pulido-Tan already directed a team of auditors to proceed to Taiwan, specifically for the purpose of auditing the accounts of, among other government agencies based therein, the MECO.[52]

In conceding that it has audit jurisdiction over the accounts of the MECO, however, the COA clarifies that it does *not* consider the former as a GOCC or a government instrumentality. On the contrary, the COA maintains that the MECO is a non-governmental entity.[53]

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[47] Memorandum of the COA; *id.* at 830-837.

[48] *Id.* at 841-844.

[49] *Id.*

[50] *Id.* at 688-689.

[51] Manifestation in lieu of Memorandum of the COA; *id.* at 684-687.

[52] *Id.*

[53] Memorandum of the COA; *id.* at 844-863.

The COA argues that, despite being a non-governmental entity, the MECO may still be audited with respect to the "*verification fees*" for overseas employment documents that it collects from Taiwanese employers on behalf of the DOLE.[54] The COA claims that, under Joint Circular No. 3-99,[55] the MECO is mandated to remit to the Department of Labor and Employment (DOLE) a portion of such "*verification fees*."[56] The COA, therefore, classifies the MECO as a non-governmental entity "*required to pay xxx government share*" subject to a partial audit of its accounts under Section 26 of the Presidential Decree No. 1445 or the State Audit Code of the Philippines (Audit Code).[57]

OUR RULING

We grant the petition in part. We declare that the MECO is a non-governmental entity. However, under existing laws,

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[54] *Id.* at 863-867.

[55] Issued on 28 September 1999 by the Department of Labor and Employment, Department of Foreign Affairs, Department of Budget and Management, Department of Finance and the Commission on Audit; *id.* at 914-926.

[56] Memorandum of the COA; *id.* at 863-867.

[57] *Id.* Section 26 of Presidential Decree No. 1445 reads:

Section 26. *General jurisdiction*. The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self- governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donation through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.

the accounts of the MECO pertaining to the "*verification fees*" it collects on behalf of the DOLE **as well as** the fees it was authorized to collect under Section 2(6) of EO No. 15, s. 2001, are subject to the audit jurisdiction of the COA. Such fees pertain to the government and should be audited by the COA.

I

We begin with the preliminary issues.

Mootness of Petition

The first preliminary issue relates to the alleged mootness of the instant *mandamus* petition, occasioned by the COA's issuance of *Office Order No. 2011-698*. The COA claims that by issuing *Office Order No. 2011-698*, it had already conceded its jurisdiction over the accounts of the MECO and so fulfilled the objective of the instant petition.[58] The COA thus urges that the instant petition be dismissed for being moot and academic.[59]

We decline to dismiss the *mandamus* petition on the ground of mootness.

A case is deemed moot and academic when, by reason of the occurrence of a supervening event, it ceases to present any justiciable controversy.[60] Since they lack an actual controversy otherwise cognizable by courts, moot cases are, as a rule, dismissible.[61]

The rule that requires dismissal of moot cases, however, is not absolute. It is subject to exceptions. In *David v. Macapagal-Arroyo*,[62] this Court comprehensively captured these exceptions scattered throughout our jurisprudence:

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[58] Manifestation in lieu of Memorandum of the COA; *id.* at 684-687.

[59] *Id.*

[60] *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006).

[61] *Id.* at 754.

[62] *Supra* note 60.

The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution;[63] *second*, the exceptional character of the situation and the paramount public interest is involved;[64] *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public;[65] and *fourth*, the case is capable of repetition yet evading review.[66]

In this case, We find that the issuance by the COA of *Office Order No. 2011*-698 indeed qualifies as a supervening event that effectively renders moot and academic the main prayer of the instant *mandamus* petition. A writ of *mandamus* to compel the COA to audit the accounts of the MECO would certainly be a mere superfluity, when the former had already obliged itself to do the same.

Be that as it may, this Court refrains from dismissing outright the petition. We believe that the *mandamus* petition was able to craft substantial issues presupposing the **commission of a grave violation of the Constitution** and involving **paramount public interest**, which need to be resolved nonetheless:

First. The petition makes a serious allegation that the COA had been remiss in its constitutional or legal duty to audit and examine the accounts of an otherwise auditable entity in the MECO.

Second. There is paramount public interest in the resolution of the issue concerning the failure of the COA to audit the accounts of the MECO. The propriety or impropriety of such a refusal is determinative of whether the COA was able to faithfully fulfill its constitutional role as the guardian of the public treasury, in which any citizen has an interest.

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[63] *Id.*, citing *Province of Batangas v. Romulo*, 473 Phil. 806, 827 (2004).

[64] *Id.*, citing *Lacson v. Perez*, 410 Phil. 78, 118 (2001).

[65] *Supra* note 63, at 827.

[66] *Id.*, citing *Albaña v. Comelec*, 478 Phil. 941, 949 (2004); *Acop v. Guingona, Jr.*, 433 Phil. 62, 68 (2002); *SANLAKAS v. Reyes*, 466 Phil. 482, 506 (2004).

Third. There is also paramount public interest in the resolution of the issue regarding the legal status of the MECO; a novelty insofar as our jurisprudence is concerned. We find that the status of the MECO—whether it may be considered as a government agency or not—has a direct bearing on the country's commitment to the *One China* policy of the PROC.[67]

An allegation as serious as a violation of a constitutional or legal duty, coupled with the pressing public interest in the resolution of all related issues, prompts this Court to pursue a definitive ruling thereon, if not for the proper guidance of the government or agency concerned, then **for the formulation of controlling principles for the education of the bench, bar and the public in general**.[68] For this purpose, the Court invokes its *symbolic function*.[69]

If the foregoing reasons are not enough to convince, We still add another:

Assuming that the allegations of neglect on the part of the COA were true, *Office Order No. 2011-698* does not offer the strongest certainty that they would not be replicated in the future. In the first place, *Office Order No. 2011-698* did not state any legal justification as to why, after decades of not

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[67] We take as cue the letter dated 24 May 2011 of DFA Secretary Albert Del Rosario addressed to several members of Congress and the Senate (*rollo*, pp. 546-551) involved in the deliberations of House Bill No. 4067 and Senate Bill No. 2640—the precursors of Republic Act No. 10149. As it was, both House Bill No. 4067 and Senate Bill No. 2640 included the MECO in the definition of a *Government Corporate Entity* or *Government Instrumentality with Corporate Powers*. Secretary Del Rosario wrote the letter to express his department's objection to such inclusion, explaining that: "*classifying MECO as a GICP, xxx will effectively accord MECO official status that will contravene the purpose for which it was originally created*." Hence, Secretary Del Rosario vouched for the exclusion of the MECO from R.A. No. 10149 "*so as not to adversely affect our bilateral relations with both China and Taiwan*."

[68] *David v. Macapagal-Arroyo, supra* note 60, at 754-755.

[69] The symbolic function of the Supreme Court has been described as its "*duty to formulate guiding and controlling principles, precepts, doctrines, or rules*." *See Salonga v. Hon. Paño*, 219 Phil. 402, 429-430 (1985).

auditing the accounts of the MECO, the COA suddenly decided to do so. Neither does it state any determination regarding the true status of the MECO. The justifications provided by the COA, in fact, only appears in the memorandum[70] it submitted to this Court for purposes of this case.

Thus, the inclusion of the MECO in *Office Order No. 2011-698* appears to be entirely dependent upon the judgment of the incumbent chairperson of the COA; susceptible of being undone, with or without reason, by her or even her successor. Hence, the case now before this Court is dangerously **capable of being repeated yet evading review**.

Verily, this Court should not dismiss the *mandamus* petition on the ground of mootness.

Standing of Petitioner

The second preliminary issue is concerned with the standing of the petitioner to file the instant *mandamus* petition. The COA claims that petitioner has none, for the latter was not able to concretely establish that he had been aggrieved or prejudiced by its failure to audit the accounts of the MECO.[71]

Related to the issue of lack of standing is the MECO's contention that petitioner has no cause of action to file the instant *mandamus* petition. The MECO faults petitioner for not making any demand for it to submit to an audit by the COA or for the COA to perform such an audit, prior to filing the instant petition.[72]

We sustain petitioner's standing, as a concerned citizen, to file the instant petition.

The rules regarding legal standing in bringing public suits, or *locus standi*, are already well-defined in our case law. Again, We cite *David*, which summarizes jurisprudence on this point:[73]

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[70] *Rollo*, pp. 823-869.

[71] Memorandum of the COA; *rollo*, pp. 830-837.

[72] Memorandum of the MECO; *id.* at 730-738.

[73] *Supra* note 60, at 760.

By way of summary, the following rules may be culled from the cases decided by this Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

(1) the cases involve constitutional issues;

(2) for **taxpayers**, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

(3) for **voters**, there must be a showing of obvious interest in the validity of the election law in question;

(4) for **concerned citizens**, there must be a showing that the issues raised are of **transcendental importance** which must be settled early; and

(5) for **legislators**, there must be a claim that the official action complained of infringes upon their prerogatives as legislators.

We rule that the instant petition raises issues of **transcendental importance**, involved as they are with the performance of a constitutional duty, allegedly neglected, by the COA. Hence, We hold that the petitioner, as a concerned citizen, has the requisite legal standing to file the instant *mandamus* petition.

To be sure, petitioner does not need to make any prior demand on the MECO or the COA in order to maintain the instant petition. The duty of the COA sought to be compelled by *mandamus*, emanates from the Constitution and law, which explicitly require, or "*demand*," that it perform the said duty. To the mind of this Court, petitioner already established his cause of action against the COA when he alleged that the COA had neglected its duty in violation of the Constitution and the law.

Principle of Hierarchy of Courts

The last preliminary issue is concerned with the petition's non-observance of the principle of hierarchy of courts. The COA assails the filing of the instant *mandamus* petition directly with this Court, when such petition could have very well been presented, at the first instance, before the Court of Appeals or

any Regional Trial Court.[74] The COA claims that the petitioner was not able to provide compelling reasons to justify a direct resort to the Supreme Court.[75]

In view of the **transcendental importance** of the issues raised in the *mandamus* petition, as earlier mentioned, this Court waives this last procedural issue in favor of a resolution on the merits.[76]

II

To the merits of this petition, then.

The single most crucial question asked by this case is whether the COA is, under prevailing law, mandated to audit the accounts of the MECO. Conversely, are the accounts of the MECO subject to the audit jurisdiction of the COA?

Law, of course, identifies which accounts of what entities are subject to the audit jurisdiction of the COA.

Under Section 2(1) of Article IX-D of the Constitution,[77] the COA was vested with the "*power, authority and duty*"

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[74] Memorandum of the COA; *rollo*, pp. 841-844.

[75] *Id.*

[76] *Chavez v. Public Estates Authority*, 433 Phil. 506, 524 (2002).

[77] Constitution, Article IX-D, Section 2(1) reads:

The Commission on Audit shall have 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, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post- audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and

to "*examine, audit and settle*" the "*accounts*" of the following entities:

1. The government, or any of its subdivisions, agencies and instrumentalities;
2. GOCCs with original charters;
3. GOCCs without original charters;
4. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; *and*
5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity.[78]

The term "*accounts*" mentioned in the subject constitutional provision pertains to the "*revenue*," "*receipts*," "*expenditures*" and "*uses of funds and property*" of the foregoing entities.[79]

Complementing the constitutional power of the COA to audit accounts of "*non-governmental entities receiving subsidy or equity xxx from or through the government*" is Section 29(1)[80] of the Audit Code, which grants the COA *visitorial authority* over the following non-governmental entities:

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appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

[78] The Constitution provides that the entities covered by items 1 and 2 above, are subject to the plenary auditing power of the COA, including *pre-audits*; whereas the entities covered by items 3, 4 and 5 are, generally, only subject to *post-audit* by the COA. *See* Constitution, Article IX-D, Section 2(1).

[79] Section 2(1), Article IX-D of the Constitution.

[80] Section 29(1) of Presidential Decree No. 1445 provides:

Visitorial authority. (1) The Commission shall have visitorial authority over non-government entities subsidized by the government, those required to pay levies or government share, those which have received counterpart funds from the government or are partly funded by donations through the

1. Non-governmental entities "*subsidized by the government*";
2. Non-governmental entities "***required to pay** levy or **government share***";
3. Non-governmental entities that have "*received counterpart funds from the government*"; and
4. Non-governmental entities "*partly funded by donations through the government*."

Section 29(1) of the Audit Code, however, limits the audit of the foregoing non-governmental entities only to "*funds xxx coming from or through the government*."[81] This section of the Audit Code is, in turn, substantially reproduced in Section 14(1), Book V of the Administrative Code.[82]

In addition to the foregoing, the Administrative Code also empowers the COA to examine and audit "*the books, records and accounts*" of public utilities "*in connection with the fixing of rates of every nature, or in relation to the proceedings of the proper regulatory agencies, for purposes of determining franchise tax*."[83]

Both petitioner and the COA claim that the accounts of the MECO are within the audit jurisdiction of the COA, but vary on the extent of the audit and on what type of auditable entity

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government, the said authority however pertaining only to the audit of those funds or subsidies coming from or through the government.

[81] *Id.*

[82] Section 14(1), Chapter Four, Subtitle B, Book V of the Administrative Code (1987) provides:

Visitorial authority. (1) The Commission shall have visitorial authority over non-government entities subsidized by the government, those required to pay levies or have government share, those which have received counterpart funds from the government or are partly funded by donations through the government. This authority, however, shall pertain only to the audit of these funds or subsidies coming from or through the government;

[83] Administrative Code (1987), Book V, Subtitle B, Chapter Four, Section 22(1).

the MECO is. The petitioner posits that all accounts of the MECO are auditable as the latter is a *bona fide* GOCC or government instrumentality.[84] On the other hand, the COA argues that only the accounts of the MECO that pertain to the "*verification fees*" it collects on behalf of the DOLE are auditable because the former is merely a non-governmental entity "*required to pay xxx government share*" per the Audit Code.[85]

We examine both contentions.

The MECO Is Not a GOCC or Government Instrumentality

We start with the petitioner's contention.

Petitioner claims that the accounts of the MECO ought to be audited by the COA because the former is a GOCC or government instrumentality. Petitioner points out that the MECO is a non-stock corporation "*vested with governmental functions relating to public needs*"; it is "*controlled by the government thru a board of directors appointed by the President of the Philippines*"; and it operates "*outside of the departmental framework,*" subject only to the "*operational and policy supervision of the DTI.*"[86] The MECO thus possesses, petitioner argues, the essential characteristics of a *bona fide* GOCC and government instrumentality.[87]

We take exception to petitioner's characterization of the MECO as a GOCC or government instrumentality. The MECO is *not* a GOCC or government instrumentality.

Government instrumentalities are agencies of the national government that, by reason of some "*special function or jurisdiction*" they perform or exercise, are allotted "*operational autonomy*" and are "*not integrated within the department*

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[84] Petition for *Mandamus*; *rollo*, p. 23-46.

[85] Memorandum of the COA; *id.* at 863-867.

[86] Petition for *Mandamus*; *id.* at 23-46.

[87] *Id.*

framework."[88] Subsumed under the rubric "government instrumentality" are the following entities:[89]

1. regulatory agencies,
2. chartered institutions,
3. *government corporate entities* or *government instrumentalities with corporate powers* (GCE/GICP),[90] and
4. GOCCs

The Administrative Code defines a GOCC:[91]

(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: x x x.

The above definition is, in turn, replicated in the more recent Republic Act No. 10149 or the GOCC Governance Act of 2011, to wit:[92]

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[88] Section 2(10), Introductory Provisions of the Administrative Code (1987) reads:

General Terms Defined. - Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

x x x x x x x x x

(10) Instrumentality refers to any agency of the National Government, not integrated within the department framework vested within special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions and government-owned or controlled corporations.

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[89] *Id.*

[90] Republic Act No. 10149, Section 3(n). *See* also *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 237 (2006).

[91] Administrative Code (1987), Introductory Provisions, Section 2(13).

[92] Republic Act No. 10149, Section 3(o).

(o) Government-Owned or -Controlled Corporation (GOCC) refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: x x x.

GOCCs, therefore, are "*stock or non-stock*" corporations "*vested with functions relating to public needs*" that are "*owned by the Government directly or through its instrumentalities*."[93] By definition, three attributes thus make an entity a GOCC: *first*, its organization as stock or non-stock corporation;[94] *second*, the public character of its function; and *third*, government ownership over the same.

Possession of *all* three attributes is necessary to deem an entity a GOCC.

In this case, there is not much dispute that the MECO possesses the *first* and *second* attributes. It is the *third* attribute, which the MECO lacks.

The MECO Is Organized as a Non-Stock Corporation

The organization of the MECO as a non-stock corporation cannot at all be denied. Records disclose that the MECO was incorporated as a non-stock corporation under the Corporation Code on 16 December 1977.[95] The incorporators of the MECO were Simeon R. Roxas, Florencio C. Guzon, Manuel K. Dayrit, Pio K. Luz and Eduardo B. Ledesma, who also served as the corporation's original members and directors.[96]

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[93] Administrative Code (1987), Introductory Provisions, Section 2(13); Republic Act No. 10149, Section 3(o).

[94] *Manila International Airport Authority v. Court of Appeals*, *supra* note 89, at 210.

[95] *See* Fourth Whereas clause of Executive Order No. 490, s. 1998.

[96] *Rollo*, pp. 100-102.

The purposes for which the MECO was organized also establishes its *non-profit* character, to wit:[97]

1. **To establish and develop the commercial and industrial interests of Filipino nationals here and abroad and assist on all measures designed to promote and maintain the trade relations of the country with the citizens of other foreign countries**;
2. To receive and accept grants and subsidies that are reasonably necessary in carrying out the corporate purposes provided they are not subject to conditions defeatist for or incompatible with said purpose;
3. To acquire by purchase, lease or by any gratuitous title real and personal properties as may be necessary for the use and need of the corporation, and in like manner when they are
4. To do and perform any and all acts which are deemed reasonably necessary to carry out the purposes. (Emphasis supplied)

The purposes for which the MECO was organized are somewhat analogous to those of a *trade, business or industry chamber*,[98] but only on a much larger scale *i.e.*, instead of furthering the interests of a particular line of business or industry within a local sphere, the MECO seeks to promote the general interests of the Filipino people in a foreign land.

Finally, it is not disputed that none of the income derived by the MECO is distributable as dividends to any of its members, directors or officers.

Verily, the MECO is organized as a non-stock corporation.

The MECO Performs Functions with a Public Aspect.

The public character of the functions vested in the MECO cannot be doubted either. Indeed, to a certain degree, the

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[97] *Id.*

[98] *See* Corporation Code, Section 88.

functions of the MECO can even be said to partake of the nature of *governmental* functions. As earlier intimated, it is the MECO that, on behalf of the people of the Philippines, currently facilitates unofficial relations with the people in Taiwan.

Consistent with its corporate purposes, the MECO was "*authorized*" by the Philippine government to perform certain "*consular and other functions*" relating to the promotion, protection and facilitation of Philippine interests in Taiwan.[99] The full extent of such authorized functions are presently detailed in Sections 1 and 2 of EO No. 15, s. 2001:

> *SECTION 1*. Consistent with its corporate purposes and subject to the conditions stated in Section 3 hereof, MECO is hereby authorized to assist in the performance of the following functions:
>
> 1. Formulation and implementation of a program to attract and promote investments from Taiwan to Philippine industries and businesses, especially in manufacturing, tourism, construction and other preferred areas of investments;
>
> 2. Promotion of the export of Philippine products and Filipino manpower services, including Philippine management services, to Taiwan;
>
> 3. Negotiation and/or assistance in the negotiation and conclusion of agreements or other arrangements concerning trade, investment, economic cooperation, technology transfer, banking and finance, scientific, cultural, educational and other modes of cooperative endeavors between the Philippines and Taiwan, on a people-to-people basis, in accordance with established rules and regulations;
>
> 4. Reporting on, and identification of, employment and business opportunities in Taiwan for the promotion of Philippine exports, manpower and management services, and tourism;
>
> 5. Dissemination in Taiwan of information on the Philippines, especially in the fields of trade, tourism, labor, economic cooperation, and cultural, educational and scientific endeavors;
>
> 6. Conduct of periodic assessment of market conditions in Taiwan, including submission of trade statistics and commercial

[99] Executive Order No. 15 issued on 16 May 2001.

reports for use of Philippine industries and businesses; and

7. Facilitation, fostering and cultivation of cultural, sports, social, and educational exchanges between the peoples of the Philippines and Taiwan.

*SECTION 2***.** In addition to the above-mentioned authority and subject to the conditions stated in Section 3 hereof, MECO, through its branch offices in Taiwan, is hereby authorized to perform the following functions:

1. Issuance of temporary visitors' visas and transit and crew list visas, and such other visa services as may be authorized by the Department of Foreign Affairs;

2. Issuance, renewal, extension or amendment of passports of Filipino citizens in accordance with existing regulations, and provision of such other passport services as may be required under the circumstances;

3. Certification or affirmation of the authenticity of documents submitted for authentication;

4. Providing translation services;

5. Assistance and protection to Filipino nationals and other legal/juridical persons working or residing in Taiwan, including making representations to the extent allowed by local and international law on their behalf before civil and juridical authorities of Taiwan; and

6. Collection of reasonable fees on the first four (4) functions enumerated above to defray the cost of its operations.

A perusal of the above functions of the MECO reveals its uncanny similarity to some of the functions typically performed by the DFA itself, through the latter's diplomatic and consular missions.[100] The functions of the MECO, in other words, are of the kind that would otherwise be performed by the Philippines' own diplomatic and consular organs, if not only for the government's acquiescence that they instead be exercised by the MECO.

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100 *See* Administrative Code (1987), Book IV, Chapter 7, Sections 20-21.

Evidently, the functions vested in the MECO are impressed with a public aspect.

The MECO Is Not Owned or Controlled by the Government

Organization as a non-stock corporation and the mere performance of functions with a public aspect, however, are not by themselves sufficient to consider the MECO as a GOCC. In order to qualify as a GOCC, a corporation must also, if not more importantly, be owned by the government.

The government *owns* a stock or non-stock corporation if it has controlling interest in the corporation. In a stock corporation, the controlling interest of the government is assured by its ownership of *at least* fifty-one percent (51%) of the corporate capital stock.[101] In a non-stock corporation, like the MECO, jurisprudence teaches that the controlling interest of the government is affirmed when "*at least majority of the members are government officials holding such membership by appointment or designation*"[102] or there is otherwise "*substantial participation of the government in the selection*" of the corporation's governing board.[103]

In this case, the petitioner argues that the government has controlling interest in the MECO because it is the President of the Philippines that *indirectly* appoints the directors of the corporation.[104] The petitioner claims that the President appoints directors of the MECO thru "*desire letters*" addressed to the corporation's board.[105] As evidence, the petitioner cites the assumption of one Mr. Antonio Basilio as chairman of the board of directors of the MECO in 2001, which was allegedly

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[101] Administrative Code (1987), Introductory Provisions, Section 2(13); Republic Act No. 10149, Section 3(o).

[102] *Liban v. Gordon*, G.R. No. 175352, 15 July 2009, 593 SCRA 68, 88.

[103] *Boy Scouts of the Philippines v. NLRC*, G.R. No. 80767, 22 April 1991, 196 SCRA 176, 186.

[104] Petition for *Mandamus*; *rollo*, p. 34-37.

[105] *Id*.

accomplished when former President Macapagal-Arroyo, through a memorandum dated 20 February 2001, expressed her "*desire*" to the board of directors of the MECO for the election of Mr. Basilio as chairman.[106]

The MECO, however, counters that the "*desire letters*" that the President transmits are merely recommendatory and not binding on it.[107] The MECO maintains that, as a corporation organized under the Corporation Code, matters relating to the election of its directors and officers, as well as its membership, are ultimately governed by the appropriate provisions of the said code, its articles of incorporation and its by-laws.[108]

As between the contrasting arguments, We find the contention of the MECO to be the one more consistent with the law.

The fact of the incorporation of the MECO under the Corporation Code is key. The MECO was correct in postulating that, as a corporation organized under the Corporation Code, it is governed by the appropriate provisions of the said code, its articles of incorporation and its by-laws. In this case, it is the *by-laws*[109] of the MECO that stipulates that its directors are elected by its members; its officers are elected by its directors; and its members, other than the original incorporators, are admitted by way of a unanimous board resolution, to wit:

SECTION II. MEMBERSHIP

Article 2. Members shall be classified as (a) Regular and (b) Honorary.

(a) Regular members – shall consist of the original incorporators and such other members who, upon application for membership, are unanimously admitted by the Board of Directors.

(b) Honorary member – A person of distinction in business who as sympathizer of the objectives of the corporation, is invited

[106] *Id*.

[107] Memorandum of the MECO; *id.* at 744-753.

[108] *Id*.

[109] *Id.* at 296-304.

by the Board to be an honorary member.

SECTION III. BOARD OF DIRECTORS

Article 3. At the first meeting of the regular members, they shall organize and constitute themselves as a Board composed of five (5) members, including its Chairman, each of whom as to serve until such time as his own successor shall have been elected by the regular members in an election called for the purpose. The number of members of the Board shall be increased to seven (7) when circumstances so warrant and by means of a majority vote of the Board members and appropriate application to and approval by the Securities and Exchange Commission. Unless otherwise provided herein or by law, a majority vote of all Board members present shall be necessary to carry out all Board resolutions.

During the same meeting, the Board shall also elect its own officers, including the designation of the principal officer who shall be the Chairman. In line with this, the Chairman shall also carry the title Chief Executive Officer. The officer who shall head the branch or office for the agency that may be established abroad shall have the title of Director and Resident Representative. He will also be the Vice-Chairman. All other members of the Board shall have the title of Director.

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SECTION IV. EXECUTIVE COMMITTEE

Article 5. There shall be established an Executive Committee composed of at least three (3) members of the Board. The members of the Executive Committee shall be elected by the members of the Board among themselves.

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SECTION VI. OFFICERS: DUTIES, COMPENSATION

Article 8. The officers of the corporation shall consist of a Chairman of the Board, Vice-Chairman, Chief Finance Officer, and a Secretary. Except for the Secretary, who is appointed by the Chairman of the Board, other officers and employees of the corporation shall be appointed by the Board.

The Deputy Representative and other officials and employees of a branch office or agency abroad are appointed solely by the Vice Chairman and Resident Representative concerned. All such

appointments however are subject to ratification by the Board.

It is significant to note that *none* of the original incorporators of the MECO were shown to be government officials at the time of the corporation's organization. Indeed, none of the members, officers or board of directors of the MECO, from its incorporation up to the present day, were established as government appointees or public officers designated by reason of their office. There is, in fact, no law or executive order that authorizes such an appointment or designation. Hence, from a strictly legal perspective, it appears that the presidential "*desire letters*" pointed out by petitioner—if such letters even exist outside of the case of Mr. Basilio—are, no matter how strong its persuasive effect may be, merely recommendatory.

The MECO Is Not a Government Instrumentality; It Is a Sui Generis Entity.

The categorical exclusion of the MECO from a GOCC makes it easier to exclude the same from any other class of government instrumentality. The other government instrumentalities *i.e.*, the regulatory agencies, chartered institutions and GCE/GICP are all, by explicit or implicit definition, creatures of the law.[110] The MECO cannot be any other instrumentality because it was, as mentioned earlier, merely incorporated under the Corporation Code.

Hence, unless its legality is questioned, and in this case it was not, the fact that the MECO is operating under the *policy supervision* of the DTI is no longer a relevant issue to be reckoned with for purposes of this case.

For whatever it is worth, however, and without justifying anything, it is easy enough for this Court to understand the

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[110] *See* Administrative Code (1987), Introductory Provisions, Section 2(11) and (12). *See* also Republic Act No. 10149, Section 3(o). A GCE/GICP is, under the case of *Manila International Airport Authority v. Court of Appeals* (G.R. No. 155650, 20 July 2006), described as a government instrumentality exercising corporate powers but is not organized as a stock or non-stock corporation. Necessarily, a GCE/GICP must be created by law.

rationale, or necessity even, of the executive branch placing the MECO under the *policy supervision* of one of its agencies.

It is evident, from the peculiar circumstances surrounding its incorporation, that the MECO was not intended to operate as any other ordinary corporation. And it is not. Despite its private origins, and perhaps deliberately so, the MECO was "*entrusted*"[111] by the government with the "*delicate and precarious*"[112] responsibility of pursuing "*unofficial*"[113] relations with the people of a foreign land whose government the Philippines is bound not to recognize. The intricacy involved in such undertaking is the possibility that, at any given time in fulfilling the purposes for which it was incorporated, the MECO may find itself engaged in dealings or activities that can directly contradict the Philippines' commitment to the *One China* policy of the PROC. Such a scenario can only truly be avoided if the executive department exercises some form of oversight, no matter how limited, over the operations of this otherwise private entity.

Indeed, from hindsight, it is clear that the MECO is uniquely situated as compared with other private corporations. From its over-reaching corporate objectives, its special duty and authority to exercise certain consular functions, up to the oversight by the executive department over its operations—**all the while maintaining its legal status as a non-governmental entity**—the MECO is, for all intents and purposes, *sui generis*.

Certain Accounts of the MECO May Be Audited By the COA.

We now come to the COA's contention.

The COA argues that, despite being a non-governmental entity, the MECO may still be audited with respect to the

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[111] Sixth Whereas clause of Executive Order No. 931, s. 1984.

[112] *Id.* The duty of the MECO was described in the Sixth Whereas clause of Executive Order No. 490, s. 1998 and the Fifth Whereas clause of Executive Order No. 15, s. 2001 as "*important and sensitive*."

[113] Seventh Whereas clause of Executive Order No. 931, s. 1984.

"*verification fees*" for overseas employment documents that the latter collects from Taiwanese employers on behalf of the DOLE.[114] The COA claims that, under Joint Circular No. 3-99, the MECO is mandated to remit to the national government a portion of such "*verification fees*."[115] The COA, therefore, classifies the MECO as a non-governmental entity "*required to pay xxx government share*" per the Audit Code.[116]

We agree that the accounts of the MECO pertaining to its collection of "*verification fees*" is subject to the audit jurisdiction of the COA. However, We digress from the view that such accounts are the only ones that ought to be audited by the COA. Upon careful evaluation of the information made available by the records *vis-à-vis* the spirit and the letter of the laws and executive issuances applicable, We find that the accounts of the MECO pertaining to the **fees it was authorized to collect under Section 2(6) of EO No. 15, s. 2001**, are likewise subject to the audit jurisdiction of the COA.

Verification Fees Collected by the MECO

In its *comment*,[117] the MECO admitted that roughly 9% of its income is derived from its share in the "*verification fees*" for overseas employment documents it collects on behalf of the DOLE.

The "*verification fees*" mentioned here refers to the "*service fee for the verification of overseas employment contracts, recruitment agreement or special powers of attorney*" that the DOLE was authorized to collect under Section 7 of EO No. 1022,[118] which was issued by President Ferdinand E. Marcos on 1 May 1985. These fees are supposed to be collected by the DOLE from the foreign employers of OFWs and are intended

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[114] Memorandum of the COA; *rollo*, pp. 863-867.

[115] *Id.*

[116] *Id.*

[117] Comment of the MECO; *id.* at 190-231, 221.

[118] Entitled *On Strengthening the Administrative and Operational Capabilities of the Overseas Employment Program.*

to be used for "*the promotion of overseas employment and for welfare services to Filipino workers within the area of jurisdiction of* [concerned] *foreign missions under the administration of the* [DOLE]."[119]

Joint Circular 3-99 was issued by the DOLE, DFA, the Department of Budget Management, the Department of Finance and the COA in an effort to implement Section 7 of Executive Order No. 1022.[120] Thus, under Joint Circular 3-99, the following officials have been tasked to be the "*Verification Fee Collecting Officer*" on behalf of the DOLE:[121]

1. The labor attaché or duly authorized overseas labor officer at a given foreign post, as duly designated by the DOLE Secretary;

2. In foreign posts where there is no labor attaché or duly authorized overseas labor officer, the finance officer or collecting officer of the DFA duly deputized by the DOLE Secretary as approved by the DFA Secretary;

3. In the absence of such finance officer or collecting officer, the alternate duly designated by the head of the foreign post.

Since the Philippines does not maintain an official post in Taiwan, however, the DOLE entered into a "*series*" of Memorandum of Agreements with the MECO, which made the latter the former's collecting agent with respect to the "*verification fees*" that may be due from Taiwanese employers of OFWs.[122] Under the 27 February 2004 Memorandum of Agreement between DOLE and the MECO, the "*verification*

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[119] Item 7 of Executive Order No. 1022, s. 1985.

[120] DOLE, DFA, DBM, DOF and the COA Joint Circular No. 3-99, Section 1.0.

[121] DOLE, DFA, DBM, DOF and the COA Joint Circular No. 3-99, Section 3.4.

[122] Items 49 of the COA Annual Audit Report dated 4 September 2009, on the audit of the Department of Labor and Employment; *rollo*, p. 890.

fees" to be collected by the latter are to be allocated as follows: (a) US$ 10 to be retained by the MECO as administrative fee, (b) US $10 to be remitted to the DOLE, and (c) US$ 10 to be constituted as a common fund of the MECO and DOLE.[123]

Evidently, the entire "*verification fees*" being collected by the MECO are **receivables** of the DOLE.[124] Such receipts pertain to the DOLE by virtue of Section 7 of EO No. 1022.

Consular Fees Collected by the MECO

Aside from the DOLE "*verification fees*," however, the MECO also collects "*consular fees*," or fees it collects from the exercise of its delegated consular functions.

The authority behind "*consular fees*" is Section 2(6) of EO No. 15, s. 2001. The said section authorizes the MECO to collect "*reasonable fees*" for its performance of the following consular functions:

1. Issuance of temporary visitors' visas and transit and crew list visas, and such other visa services as may be authorized by the DFA;
2. Issuance, renewal, extension or amendment of passports of Filipino citizens in accordance with existing regulations, and provision of such other passport services as may be required under the circumstances;
3. Certification or affirmation of the authenticity of documents submitted for authentication; *and*
4. Providing translation services.

Evidently, and just like the peculiarity that attends the DOLE "*verification fees*," there is no consular office for the collection

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[123] Items 56 of the COA Annual Audit Report dated 4 September 2009, on the audit of the Department of Labor and Employment; *id.* at 892.

[124] Notably, Section 4.1.1 of Joint Circular No. 3-99 of the DOLE, DFA, DBM, DOF and the COA provides that the verification fee collections of all posts shall be "*recorded as income in the DOLE-[Central Office] books under the Special Account in the General Fund (Fund 151)*."

of the "*consular fees*." Thus, the authority for the MECO to collect the "*reasonable fees*," vested unto it by the executive order.

The "*consular fees*," although held and expended by the MECO by virtue of EO No. 15, s. 2001, are, without question, derived from the exercise by the MECO of consular functions—functions it performs by and only through special authority from the government. There was never any doubt that the visas, passports and other documents that the MECO issues pursuant to its authorized functions still emanate from the Philippine government itself.

Such fees, therefore, are received by the MECO to be used strictly for the purpose set out under EO No. 15, s. 2001. They must be reasonable as the authorization requires. It is the government that has ultimate control over the disposition of the "*consular fees*," which control the government did exercise when it provided in Section 2(6) of EO No. 15, s. 2001 that such funds may be kept by the MECO "*to defray the cost of its operations*."

The Accounts of the MECO Pertaining to theVerification Fees and Consular Fees May Be Audited by the COA.

Section 14(1), Book V of the Administrative Code authorizes the COA to audit accounts of non-governmental entities "*required to pay xxx or have government share*" but only with respect to "*funds xxx coming from or through the government*." This provision of law perfectly fits the MECO:

First. The MECO receives the "*verification fees*" by reason of being the collection agent of the DOLE—a government agency. Out of its collections, the MECO is required, by agreement, to remit a portion thereof to the DOLE. Hence, the MECO is accountable to the government for its collections of such "*verification fees*" and, for that purpose, may be audited by the COA.

Second. Like the "*verification fees*," the "*consular fees*" are also received by the MECO *through* the government, having

been derived from the exercise of consular functions entrusted to the MECO by the government. Hence, the MECO remains accountable to the government for its collections of "*consular fees*" and, for that purpose, may be audited by the COA.

Tersely put, the 27 February 2008 Memorandum of Agreement between the DOLE and the MECO and Section 2(6) of EO No. 15, s. 2001, *vis-à-vis*, respectively, the "*verification fees*" and the "*consular fees*," grant and at the same time limit the authority of the MECO to collect such fees. That grant and limit require the audit by the COA of the collections thereby generated.

Conclusion

The MECO is not a GOCC or government instrumentality. It is a *sui generis* private entity especially entrusted by the government with the facilitation of unofficial relations with the people in Taiwan without jeopardizing the country's faithful commitment to the *One China* policy of the PROC. However, despite its non-governmental character, the MECO handles government funds in the form of the "*verification fees*" it collects on behalf of the DOLE and the "*consular fees*" it collects under Section 2(6) of EO No. 15, s. 2001. Hence, under existing laws, the accounts of the MECO pertaining to its collection of such "*verification fees*" and "*consular fees*" should be audited by the COA.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The Manila Economic and Cultural Office is hereby declared a non-governmental entity. However, the accounts of the Manila Economic and Cultural Office pertaining to: the *verification fees contemplated by Section 7 of Executive Order No. 1022 issued 1 May 1985*, that the former collects on behalf of the Department of Labor and Employment, **and** the *fees it was authorized to collect under Section 2(6) of Executive Order No. 15 issued 16 May 2001*, are subject to the audit jurisdiction of the COA.

No costs.

SO ORDERED.

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

EN BANC

[G.R. No. 197676. February 4, 2014]

REMMAN ENTERPRISES, INC. and CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATION, *petitioners, vs.* **PROFESSIONAL REGULATORY BOARD OF REAL ESTATE SERVICE and PROFESSIONAL REGULATION COMMISSION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUIREMENT OF JUSTICEABLE CONTROVERSY, EXPLAINED.— The Constitution requires as a condition precedent for the exercise of judicial power the existence of an actual controversy between litigants. An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible to judicial resolution. The controversy must be justiciable – definite and concrete – touching on the legal relations of parties having adverse legal interests, which may be resolved by a court of law through the application of a law. In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. An

actual case is ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it.

2. ID.; ID.; ID.; ID.; JUSTICIABLE CONTROVERSY EXISTS IN CASE AT BAR.— There is no question here that petitioners who are real estate developers are entities directly affected by the prohibition on performing acts constituting practice of real estate service without first complying with the registration and licensing requirements for brokers and agents under R.A. No. 9646. The possibility of criminal sanctions for disobeying the mandate of the new law is likewise real. Asserting that the prohibition violates their rights as property owners to dispose of their properties, petitioners challenged on constitutional grounds the implementation of R.A. No. 9646 which the respondents defended as a valid legislation pursuant to the State's police power. The Court thus finds a justiciable controversy that calls for immediate resolution.

3. ID.; ID.; CONSTITUTIONALITY OF THE "REAL ESTATE SERVICE ACT OF THE PHILIPPINES" (R.A. 9646); ONE TITLE-ONE SUBJECT REQUIREMENT UNDER THE CONSTITUTION, EXPLAINED.— The Court has previously ruled that the one-subject requirement under the Constitution is satisfied if all the parts of the statute are related, and are germane to the subject matter expressed in the title, or as long as they are not inconsistent with or foreign to the general subject and title. An act having a single general subject, indicated in the title, may contain any number of provisions, no matter how diverse they may be, so long as they are not inconsistent with or foreign to the general subject, and may be considered in furtherance of such subject by providing for the method and means of carrying out the general object. It is also well-settled that the "one title-one subject" rule does not require the Congress to employ in the title of the enactment language of such precision as to mirror, fully index or catalogue all the contents and the minute details therein. The rule is sufficiently complied with if the title is comprehensive enough as to include the general object which the statute seeks to effect. Indeed, this Court has invariably adopted a liberal rather than technical construction of the rule "so as not to cripple or impede legislation."

4. ID.; ID.; ID.; R.A. 9646 DOES NOT VIOLATE THE ONE TITLE-ONE SUBJECT RULE.— R.A. No. 9646 is entitled "*An Act Regulating the Practice of Real Estate Service in the Philippines, Creating for the Purpose a Professional Regulatory Board of Real Estate Service, Appropriating Funds Therefor and For Other Purposes*." Aside from provisions establishing a regulatory system for the professionalization of the real estate service sector, the new law extended its coverage to real estate developers with respect to their own properties. Henceforth, real estate developers are prohibited from performing acts or transactions constituting real estate service practice without first complying with registration and licensing requirements for their business, brokers or agents, appraisers, consultants and salespersons. x x x We hold that R.A. No. 9646 does not violate the one-title, one-subject rule. x x x We find that the inclusion of real estate developers is germane to the law's primary goal of developing "a corps of technically competent, responsible and respected professional real estate service practitioners whose standards of practice and service shall be globally competitive and will promote the growth of the real estate industry." Since the marketing aspect of real estate development projects entails the performance of those acts and transactions defined as real estate service practices under Section 3(g) of R.A. No. 9646, it is logically covered by the regulatory scheme to professionalize the entire real estate service sector.

5. ID.; ID.; ID.; THERE IS NO CONFLICT BETWEEN R.A. 9646 AND P.D. 957, AS AMENDED BY E.O. 648.— There is nothing in R.A. No. 9646 that repeals any provision of P.D. No. 957, as amended by E.O. No. 648. P.D. No. 957, otherwise known as "*The Subdivision and Condominium Buyers' Protective Decree*," vested the NHA with exclusive jurisdiction to regulate the real estate trade and business in accordance with its provisions. It empowered the NHA to register, approve and monitor real estate development projects and issue licenses to sell to real estate owners and developers. It further granted the NHA the authority to register and issue/revoke licenses of brokers, dealers and salesmen engaged in the selling of subdivision lots and condominium units. x x x [S]ection 29 of R.A. No. 9646 requires as a condition precedent for all persons who will engage in acts constituting real estate service, including advertising in any manner one's qualifications real estate service practitioner,

compliance with licensure examination and other registration requirements including the filing of a bond for real estate brokers and private appraisers. While Section 11 of P.D. No. 957 imposes registration requirements for dealers, brokers and salespersons engaged in the selling of subdivision lots and condominium units, Section 29 of R.A. No. 9646 regulates *all* real estate service practitioners whether private or government. While P.D. No. 957 seeks to supervise brokers and dealers who are engaged in the sale of subdivision lots and condominium units, R.A. No. 9646 aims to regulate the real estate service sector in general by professionalizing their ranks and raising the level of ethical standards for licensed real estate professionals. There is no conflict of jurisdiction because the HLURB supervises only those real estate service practitioners engaged in the sale of subdivision lots and condominium projects, specifically for violations of the provisions of P.D. No. 957, and not the entire real estate service sector which is now under the regulatory powers of the PRBRES. HLURB's supervision of brokers and dealers to effectively implement the provisions of P.D. No. 957 does not foreclose regulation of the real estate service as a profession. Real estate developers already regulated by the HLURB are now further required to comply with the professional licensure requirements under R.A. No. 9646, as provided in Sections 28, 29 and 32. Plainly, there is no inconsistency or contradiction in the assailed provisions of R.A. No. 9646 and P.D. No. 957, as amended.

6. ID.; ID.; ID.; R.A. 9646 DOES NOT VIOLATE THE RULE AGAINST DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW.— There is no deprivation of property as no restriction on their use and enjoyment of property is caused implementation of R.A. No. 9646. If petitioners as property owners feel burdened by the new requirement of engaging the services of only licensed real estate professionals in the sale and marketing of their properties, such is an unavoidable consequence of a reasonable regulatory measure. Indeed, no right is absolute, and the proper regulation of a profession, calling, business or trade has always been upheld as a legitimate subject of a valid exercise of the police power of the State particularly when their conduct affects the execution of legitimate governmental functions, the preservation of the State, public health and welfare and public morals. In any case,

where the liberty curtailed affects at most the rights of property, the permissible scope of regulatory measures is certainly much wider. To pretend that licensing or accreditation requirements violate the due process clause is to ignore the settled practice, under the mantle of police power, of regulating entry to the practice of various trades or professions.

7. ID.; ID.; ID.; R.A. 9646 DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.— Although the equal protection clause of the Constitution does not forbid classification, it is imperative that the classification should be based on real and substantial differences having a reasonable relation to the subject of the particular legislation. If classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions, the classification does not violate the equal protection guarantee. R.A. No. 9646 was intended to provide institutionalized government support for the development of "a corps of highly respected, technically competent, and disciplined real estate service practitioners, knowledgeable of internationally accepted standards and practice of the profession." Real estate developers at present constitute a sector that hires or employs the largest number of brokers, salespersons, appraisers and consultants due to the sheer number of products (lots, houses and condominium units) they advertise and sell nationwide. As early as in the '70s, there has been a proliferation of errant developers, operators or sellers who have reneged on their representation and obligations to comply with government regulations such as the provision and maintenance of subdivision roads, drainage, sewerage, water system and other basic requirements. To protect the interest of home and lot buyers from fraudulent acts and manipulations perpetrated by these unscrupulous subdivision and condominium sellers and operators, P.D. No. 957 was issued to strictly regulate housing and real estate development projects. Hence, in approving R.A. No. 9646, the legislature rightfully recognized the necessity of imposing the new licensure requirements to *all* real estate service practitioners, including and more importantly, those real estate service practitioners working for real estate developers. Unlike individuals or entities having isolated transactions over their own property, real estate developers sell lots, houses and condominium units in the ordinary course of business, a

business which is highly regulated by the State to ensure the health and safety of home and lot buyers. The foregoing shows that substantial distinctions do exist between ordinary property owners exempted under Section 28(a) and real estate developers like petitioners, and the classification enshrined in R.A. No. 9646 is reasonable and relevant to its legitimate purpose. The Court thus rules that R.A. No. 9646 is valid and constitutional.

APPEARANCES OF COUNSEL

J. Calida & Associates Law Firm for petitioners.
The Solicitor General for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Assailed in this petition for review under Rule 45 is the Decision[1] dated July 12, 2011 of the Regional Trial Court (RTC) of Manila, Branch 42 denying the petition to declare as unconstitutional Sections 28(a), 29 and 32 of Republic Act (R.A.) No. 9646.

R.A. No. 9646, otherwise known as the "Real Estate Service Act of the Philippines" was signed into law on June 29, 2009 by President Gloria Macapagal-Arroyo. It aims to professionalize the real estate service sector under a regulatory scheme of licensing, registration and supervision of real estate service practitioners (real estate brokers, appraisers, assessors, consultants and salespersons) in the country. Prior to its enactment, real estate service practitioners were under the supervision of the Department of Trade and Industry (DTI) through the Bureau of Trade Regulation and Consumer Protection (BTRCP), in the exercise of its consumer regulation functions. Such authority is now transferred to the Professional Regulation Commission (PRC) through the Professional Regulatory Board of Real Estate Service (PRBRES) created under the new law.

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[1] *Rollo*, pp. 28-36. Penned by Presiding Judge Dinnah C. Aguila-Topacio.

The implementing rules and regulations (IRR) of R.A. No. 9646 were promulgated on July 21, 2010 by the PRC and PRBRES under Resolution No. 02, Series of 2010.

On December 7, 2010, herein petitioners Remman Enterprises, Inc. (REI) and the Chamber of Real Estate and Builders' Association (CREBA) instituted Civil Case No. 10-124776 in the Regional Trial Court of Manila, Branch 42. Petitioners sought to declare as void and unconstitutional the following provisions of R.A. No. 9646:

SEC. 28. *Exemptions from the Acts Constituting the Practice of Real Estate Service.* – The provisions of this Act and its rules and regulations shall not apply to the following:

(a) Any person, natural or juridical, who shall directly perform by himself/herself the acts mentioned in Section 3 hereof with reference to his/her or its own property, **except real estate developers**;

xxx x x x xxx

SEC. 29. *Prohibition Against the Unauthorized Practice of Real Estate Service.* – No person shall practice or offer to practice real estate service in the Philippines or offer himself/herself as real estate service practitioner, or use the title, word, letter, figure or any sign tending to convey the impression that one is a real estate service practitioner, or advertise or indicate in any manner whatsoever that one is qualified to practice the profession, or be appointed as real property appraiser or assessor in any national government entity or local government unit, unless he/she has **satisfactorily passed the licensure examination** given by the Board, except as otherwise provided in this Act, **a holder of a valid certificate of registration**, and **professional identification card or a valid special/temporary permit** duly issued to him/her by the Board and the Commission, and in the case of real estate brokers and private appraisers, they have **paid the required bond** as hereto provided.

xxx x x x xxx

SEC. 32. *Corporate Practice of the Real Estate Service.* – (a) No partnership or corporation shall engage in the business of real estate service unless it is duly registered with the Securities and Exchange Commission (SEC), and the **persons authorized to act for the partnership or corporation are all duly registered and licensed real**

estate brokers, appraisers or consultants, as the case may be. The partnership or corporation shall regularly submit a list of its real estate service practitioners to the Commission and to the SEC as part of its annual reportorial requirements. There shall at least be one (1) licensed real estate broker for every twenty (20) accredited salespersons.

(b) Divisions or departments of partnerships and corporations engaged in marketing or selling any real estate development project in the regular course of business must be headed by **full-time registered and licensed real estate brokers.**

(c) Branch offices of real estate brokers, appraisers or consultants must be manned by a duly licensed real estate broker, appraiser or consultant as the case may be.

In case of resignation or termination from employment of a real estate service practitioner, the same shall be reported by the employer to the Board within a period not to exceed fifteen (15) days from the date of effectivity of the resignation or termination.

Subject to the provisions of the Labor Code, a corporation or partnership may hire the services of registered and licensed real estate brokers, appraisers or consultants on commission basis to perform real estate services and the latter shall be deemed independent contractors and not employees of such corporations. (Emphasis and underscoring supplied.)

According to petitioners, the new law is constitutionally infirm because (1) it violates Article VI, Section 26 (1) of the 1987 Philippine Constitution which mandates that "[e]very bill passed by Congress shall embrace only one subject which shall be expressed in the title thereof"; (2) it is in direct conflict with Executive Order (E.O.) No. 648 which transferred the exclusive jurisdiction of the National Housing Authority (NHA) to regulate the real estate trade and business to the Human Settlements Commission, now the Housing and Land Use Regulatory Board (HLURB), which authority includes the issuance of license to sell of subdivision owners and developers pursuant to Presidential Decree (P.D.) No. 957; (3) it violates the due process clause as it impinges on the real estate developers' most basic ownership rights, the right to use and dispose property, which is enshrined

in Article 428 of the Civil Code; and (4) Section 28(a) of R.A. No. 9646 violates the equal protection clause as no substantial distinctions exist between real estate developers and the exempted group mentioned since both are property owners dealing with their own property.

Additionally, petitioners contended that the lofty goal of nurturing and developing a "corps of technically competent, reasonable and respected professional real estate service practitioners" is not served by curtailing the right of real estate developers to conduct their business of selling properties. On the contrary, these restrictions would have disastrous effects on the real estate industry as the additional cost of commissions would affect the pricing and affordability of real estate packages. When that happens, petitioners claimed that the millions of jobs and billions in revenues that the real estate industry generates for the government will be a thing of the past.

After a summary hearing, the trial court denied the prayer for issuance of a writ of preliminary injunction.

On July 12, 2011, the trial court rendered its Decision[2] denying the petition. The trial court held that the assailed provisions are relevant to the title of the law as they are intended to regulate the practice of real estate service in the country by ensuring that those who engage in it shall either be a licensed real estate broker, or under the latter's supervision. It likewise found no real discord between E.O. No. 648 and R.A. No. 9646 as the latter does not render nugatory the license to sell granted by the HLURB to real estate developers, which license would still subsist. The only difference is that by virtue of the new law, real estate developers will now be compelled to hire the services of one licensed real estate broker for every twenty salespersons to guide and supervise the coterie of salespersons under the employ of the real estate developers.

On the issue of due process, the trial court said that the questioned provisions do not preclude property owners from

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[2] *Id.*

using, enjoying, or disposing of their own property because they can still develop and sell their properties except that they have to secure the services of a licensed real estate broker who shall oversee the actions of the unlicensed real estate practitioners under their employ. Since the subject provisions merely prescribe the requirements for the regulation of the practice of real estate services, these are consistent with a valid exercise of the State's police power. The trial court further ruled that Section 28(a) does not violate the equal protection clause because the exemption of real estate developers was anchored on reasonable classification aimed at protecting the buying public from the rampant misrepresentations often committed by unlicensed real estate practitioners, and to prevent unscrupulous and unethical real estate practices from flourishing considering the large number of consumers in the regular course of business compared to isolated sale transactions made by private individuals selling their own property.

Hence, this appeal on the following questions of law:

1. Whether there is a justiciable controversy for this Honorable Court to adjudicate;
2. Whether [R.A. No. 9646] is unconstitutional for violating the "one title-one subject" rule under Article VI, Section 26 (1) of the Philippine Constitution;
3. Whether [R.A. No. 9646] is in conflict with PD 957, as amended by EO 648, with respect to the exclusive jurisdiction of the HLURB to regulate real estate developers;
4. Whether Sections 28(a), 29, and 32 of [R.A. No. 9646], insofar as they affect the rights of real estate developers, are unconstitutional for violating substantive due process; and
5. Whether Section 28(a), which treats real estate developers differently from other natural or juridical persons who directly perform acts of real estate service with reference to their own property, is unconstitutional for violating the equal protection clause.[3]

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[3] *Id.* at 172-173.

The Court's Ruling

The petition has no merit.

Justiciable Controversy

The Constitution[4] requires as a condition precedent for the exercise of judicial power the existence of an actual controversy between litigants. An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible to judicial resolution.[5] The controversy must be justiciable – definite and concrete – touching on the legal relations of parties having adverse legal interests, which may be resolved by a court of law through the application of a law.[6] In other words, the pleadings must show an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an actual and substantial controversy admitting of specific relief through a decree conclusive in nature, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[7] An actual case is ripe for adjudication when the act being challenged has a direct adverse effect on the individual challenging it.[8]

There is no question here that petitioners who are real estate developers are entities directly affected by the prohibition on performing acts constituting practice of real estate service without

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[4] 1987 CONSTITUTION, Article VIII, Sec. 1., par. 2.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[5] *Garcia v. Executive Secretary*, G.R. No. 157584, April 2, 2009, 583 SCRA 119, 129.

[6] *Information Technology Foundation of the Phils. v. COMELEC*, 499 Phil. 281, 304-305 (2005); *Cutaran v. DENR*, 403 Phil. 654, 662 (2001).

[7] *Id.* at 305.

[8] *Sec. Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 427 (1998).

first complying with the registration and licensing requirements for brokers and agents under R.A. No. 9646. The possibility of criminal sanctions for disobeying the mandate of the new law is likewise real. Asserting that the prohibition violates their rights as property owners to dispose of their properties, petitioners challenged on constitutional grounds the implementation of R.A. No. 9646 which the respondents defended as a valid legislation pursuant to the State's police power. The Court thus finds a justiciable controversy that calls for immediate resolution.

No Violation of One-Title One-Subject Rule

Section 26(1), Article VI of the Constitution states:

SEC. 26 (1). Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

In *Fariñas v. The Executive Secretary*,[9] the Court explained the provision as follows:

The proscription is aimed against the evils of the so-called omnibus bills and log-rolling legislation as well as surreptitious and/or unconsidered encroaches. The provision merely calls for all parts of an act relating to its subject finding expression in its title.

To determine whether there has been compliance with the constitutional requirement that the subject of an act shall be expressed in its title, the Court laid down the rule that –

> Constitutional provisions relating to the subject matter and titles of statutes should not be so narrowly construed as to cripple or impede the power of legislation. **The requirement that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object.** Mere details need not be set forth. The title need not be an abstract or index of the Act.[10] (Emphasis supplied.)

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[9] 463 Phil. 179 (2003).

[10] *Id.* at 198.

The Court has previously ruled that the one-subject requirement under the Constitution is satisfied if all the parts of the statute are related, and are germane to the subject matter expressed in the title, or as long as they are not inconsistent with or foreign to the general subject and title.[11] An act having a single general subject, indicated in the title, may contain any number of provisions, no matter how diverse they may be, so long as they are not inconsistent with or foreign to the general subject, and may be considered in furtherance of such subject by providing for the method and means of carrying out the general object.[12]

It is also well-settled that the "one title-one subject" rule does not require the Congress to employ in the title of the enactment language of such precision as to mirror, fully index or catalogue all the contents and the minute details therein. The rule is sufficiently complied with if the title is comprehensive enough as to include the general object which the statute seeks to effect.[13] Indeed, this Court has invariably adopted a liberal rather than technical construction of the rule "so as not to cripple or impede legislation."[14]

R.A. No. 9646 is entitled "*An Act Regulating the Practice of Real Estate Service in the Philippines, Creating for the Purpose a Professional Regulatory Board of Real Estate Service, Appropriating Funds Therefor and For Other Purposes.*" Aside from provisions establishing a regulatory system for the professionalization of the real estate service sector, the new law extended its coverage to real estate developers with respect to their own properties. Henceforth,

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[11] *Cordero and Salazar v. Cabatuando and Sta. Romana,* 116 Phil. 736, 740 (1962); see also *Sumulong v. COMELEC,* 73 Phil. 288, 291 (1941).

[12] *Tio v. Videogram Regulatory Board,* 235 Phil. 198, 204 (1987).

[13] *Cawaling, Jr. v. COMELEC,* 420 Phil. 524, 534 (2001), citing *Tatad v. The Secretary of the Department of Energy,* 346 Phil. 321, 405 (1997) and *Hon. Lim v. Hon. Pacquing,* 310 Phil. 722, 767 (1995).

[14] *Id.*, citing *Tobias v. Abalos,* G.R. No. 114783, December 8, 1994, 239 SCRA 106, 111 and *Sumulong v. COMELEC, supra* note 11.

real estate developers are prohibited from performing acts or transactions constituting real estate service practice without first complying with registration and licensing requirements for their business, brokers or agents, appraisers, consultants and salespersons.

Petitioners point out that since partnerships or corporations engaged in marketing or selling any real estate development project in the regular course of business are now required to be headed by full-time, registered and licensed real estate brokers, this requirement constitutes limitations on the property rights and business prerogatives of real estate developers which are not all reflected in the title of R.A. No. 9646. Neither are real estate developers, who are already regulated under a different law, P.D. No. 957, included in the definition of real estate service practitioners.

We hold that R.A. No. 9646 does not violate the one-title, one-subject rule.

The primary objective of R.A. No. 9646 is expressed as follows:

> SEC. 2. *Declaration of Policy.* – The State recognizes the vital role of real estate service practitioners in the social, political, economic development and progress of the country by promoting the real estate market, stimulating economic activity and enhancing government income from real property-based transactions. Hence, it shall develop and nurture through proper and effective regulation and supervision a corps of technically competent, responsible and respected professional real estate service practitioners whose standards of practice and service shall be globally competitive and will promote the growth of the real estate industry.

We find that the inclusion of real estate developers is germane to the law's primary goal of developing "a corps of technically competent, responsible and respected professional real estate service practitioners whose standards of practice and service shall be globally competitive and will promote the growth of the real estate industry." Since the marketing aspect of real

estate development projects entails the performance of those acts and transactions defined as real estate service practices under Section 3(g) of R.A. No. 9646, it is logically covered by the regulatory scheme to professionalize the entire real estate service sector.

No Conflict Between R.A. No. 9646 and P.D. No. 957, as amended by E.O. No. 648

Petitioners argue that the assailed provisions still cannot be sustained because they conflict with P.D. No. 957 which decreed that the NHA shall have "exclusive jurisdiction to regulate the real estate trade and business." Such jurisdiction includes the authority to issue a license to sell to real estate developers and to register real estate dealers, brokers or salesmen upon their fulfillment of certain requirements under the law. By imposing limitations on real estate developers' property rights, petitioners contend that R.A. No. 9646 undermines the licenses to sell issued by the NHA (now the HLURB) to real estate developers allowing them to sell subdivision lots or condominium units directly to the public. Because the HLURB has been divested of its exclusive jurisdiction over real estate developers, the result is an implied repeal of P.D. No. 957 as amended by E.O. No. 648, which is not favored in law.

It is a well-settled rule of statutory construction that repeals by implication are not favored. In order to effect a repeal by implication, the later statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of implied repeal may be drawn, for inconsistency is never presumed. There must be a showing of repugnance clear and convincing in character. The language used in the later statute must be such as to render it irreconcilable with what had been formerly enacted. An inconsistency that falls short of that standard does not suffice.[15] Moreover, the failure to add a specific repealing clause indicates that the intent was not to repeal any existing law, unless an

[15] *Agujetas v. Court of Appeals*, 329 Phil. 721, 745-746 (1996).

irreconcilable inconsistency and repugnancy exist in the terms of the new and old laws.[16]

There is nothing in R.A. No. 9646 that repeals any provision of P.D. No. 957, as amended by E.O. No. 648. P.D. No. 957, otherwise known as "*The Subdivision and Condominium Buyers' Protective Decree*,"[17] vested the NHA with exclusive jurisdiction to regulate the real estate trade and business in accordance with its provisions. It empowered the NHA to register, approve and monitor real estate development projects and issue licenses to sell to real estate owners and developers. It further granted the NHA the authority to register and issue/ revoke licenses of brokers, dealers and salesmen engaged in the selling of subdivision lots and condominium units.

E.O. No. 648, issued on February 7, 1981, reorganized the Human Settlements Regulatory Commission (HSRC) and transferred the regulatory functions of the NHA under P.D. 957 to the HSRC. Among these regulatory functions were the (1) regulation of the real estate trade and business; (2) registration of subdivision lots and condominium projects; (3) issuance of license to sell subdivision lots and condominium units in the registered units; (4) approval of performance bond and the suspension of license to sell; (5) registration of dealers, brokers and salesman engaged in the business of selling subdivision lots or condominium units; and (6) revocation of registration of dealers, brokers and salesmen.[18]

E.O. No. 90, issued on December 17, 1986, renamed the HSRC as the Housing and Land Use Regulatory Board (HLURB) and was designated as the regulatory body for housing and land development under the Housing and Urban Development Coordinating Council (HUDCC). To date, HLURB continues to carry out its mandate to register real estate brokers and salesmen dealing in condominium, memorial parks and subdivision projects pursuant to Section 11 of P.D. No. 957, which reads:

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[16] *Secretary of Finance v. Hon. Ilarde*, 497 Phil. 544, 556 (2005).

[17] Issued on July 12, 1976.

[18] E.O. No. 648, Sec. 8.

SECTION 11. *Registration of Dealers, Brokers and Salesmen.* – No real estate dealer, broker or salesman shall engage in the business of selling subdivision lots or condominium units unless he has registered himself with the Authority in accordance with the provisions of this section.

If the Authority shall find that the applicant is of good repute and has complied with the applicable rules of the Authority, including the payment of the prescribed fee, he shall register such applicant as a dealer, broker or salesman upon filing a bond, or other security in lieu thereof, in such sum as may be fixed by the Authority conditioned upon his faithful compliance with the provisions of this Decree: Provided, that the registration of a salesman shall cease upon the termination of his employment with a dealer or broker.

Every registration under this section shall expire on the thirty-first day of December of each year. Renewal of registration for the succeeding year shall be granted upon written application therefore made not less than thirty nor more than sixty days before the first day of the ensuing year and upon payment of the prescribed fee, without the necessity of filing further statements or information, unless specifically required by the Authority. All applications filed beyond said period shall be treated as original applications.

The names and addresses of all persons registered as dealers, brokers, or salesmen shall be recorded in a Register of Brokers, Dealers and Salesmen kept in the Authority which shall be open to public inspection.

On the other hand, Section 29 of R.A. No. 9646 requires as a condition precedent for all persons who will engage in acts constituting real estate service, including advertising in any manner one's qualifications as a real estate service practitioner, compliance with licensure examination and other registration requirements including the filing of a bond for real estate brokers and private appraisers. While Section 11 of P.D. No. 957 imposes registration requirements for dealers, brokers and salespersons engaged in the selling of subdivision lots and condominium units, Section 29 of R.A. No. 9646 regulates *all* real estate service practitioners whether private or government. While P.D. No. 957 seeks to supervise brokers and dealers who are engaged in the sale of subdivision lots and condominium units, R.A. No.

9646 aims to regulate the real estate service sector in general by professionalizing their ranks and raising the level of ethical standards for licensed real estate professionals.

There is no conflict of jurisdiction because the HLURB supervises only those real estate service practitioners engaged in the sale of subdivision lots and condominium projects, specifically for violations of the provisions of P.D. No. 957, and not the entire real estate service sector which is now under the regulatory powers of the PRBRES. HLURB's supervision of brokers and dealers to effectively implement the provisions of P.D. No. 957 does not foreclose regulation of the real estate service as a profession. Real estate developers already regulated by the HLURB are now further required to comply with the professional licensure requirements under R.A. No. 9646, as provided in Sections 28, 29 and 32. Plainly, there is no inconsistency or contradiction in the assailed provisions of R.A. No. 9646 and P.D. No. 957, as amended.

The rule is that every statute must be interpreted and brought into accord with other laws in a way that will form a uniform system of jurisprudence. The legislature is presumed to have known existing laws on the subject and not to have enacted conflicting laws.[19] Congress, therefore, could not be presumed to have intended Sections 28, 29 and 32 of R.A. No. 9646 to run counter to P.D. No. 957.

No Violation of Due Process

Petitioners contend that the assailed provisions of R.A. No. 9646 are unduly oppressive and infringe the constitutional rule against deprivation of property without due process of law. They stress that real estate developers are now burdened by law to employ licensed real estate brokers to sell, market and dispose of their properties. Despite having invested a lot of money, time and resources in their projects, petitioners aver that real estate developers will still have less control in managing their business and will be burdened with additional expenses.

[19] *Government Service Insurance System v. City Assessor of Iloilo City*, 526 Phil. 145, 152 (2006), citing *Hon. Hagad v. Hon. Gozodadole*, 321 Phil. 604, 614 (1995).

The contention has no basis. There is no deprivation of property as no restriction on their use and enjoyment of property is caused by the implementation of R.A. No. 9646. If petitioners as property owners feel burdened by the new requirement of engaging the services of only licensed real estate professionals in the sale and marketing of their properties, such is an unavoidable consequence of a reasonable regulatory measure.

Indeed, no right is absolute, and the proper regulation of a profession, calling, business or trade has always been upheld as a legitimate subject of a valid exercise of the police power of the State particularly when their conduct affects the execution of legitimate governmental functions, the preservation of the State, public health and welfare and public morals.[20] In any case, where the liberty curtailed affects at most the rights of property, the permissible scope of regulatory measures is certainly much wider. To pretend that licensing or accreditation requirements violate the due process clause is to ignore the settled practice, under the mantle of police power, of regulating entry to the practice of various trades or professions.[21]

Here, the legislature recognized the importance of professionalizing the ranks of real estate practitioners by increasing their competence and raising ethical standards as real property transactions are "susceptible to manipulation and corruption, especially if they are in the hands of unqualified persons working under an ineffective regulatory system." The new regulatory regime aimed to fully tap the vast potential of the real estate sector for greater contribution to our gross domestic income, and real estate practitioners "serve a vital role in spearheading the continuous flow of capital, in boosting investor confidence, and in promoting overall national progress."[22]

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[20] *JMM Promotion and Management, Inc. v. Court of Appeals*, 329 Phil. 87, 100 (1996).

[21] *Id.*, citing *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306 (1967).

[22] Sponsorship Speech of Senator Panfilo Lacson on Senate Bill No. 2963, Journal of the Senate, Session No. 39, Wednesday, December 17, 2008, 14th Congress, 2nd Regular Session, pp. 1277-1278.

We thus find R.A. No. 9646 a valid exercise of the State's police power. As we said in another case challenging the constitutionality of a law granting discounts to senior citizens:

> The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."
>
> For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because **property rights, though sheltered by due process, must yield to general welfare.**
>
> Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.[23] (Emphasis supplied.)

No Violation of Equal Protection Clause

Section 28 of R.A. No. 9646 exempts from its coverage natural and juridical persons dealing with their own property, and other persons such as receivers, trustees or assignees in insolvency or bankruptcy proceedings. However, real estate developers are specifically mentioned as an exception from those enumerated therein. Petitioners argue that this provision

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[23] *Carlos Superdrug Corp. v. Department of Social Welfare and Development*, 553 Phil. 120, 132-133 (2007).

violates the equal protection clause because it unjustifiably treats real estate developers differently from those exempted persons who also own properties and desire to sell them. They insist that no substantial distinctions exist between ordinary property owners and real estate developers as the latter, in fact, are more capable of entering into real estate transactions and do not need the services of licensed real estate brokers. They assail the RTC decision in citing the reported fraudulent practices as basis for the exclusion of real estate developers from the exempted group of persons under Section 28(a).

We sustain the trial court's ruling that R.A. No. 9646 does not violate the equal protection clause.

In *Ichong v. Hernandez*,[24] the concept of equal protection was explained as follows:

> The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within such class, and reasonable grounds exists for making a distinction between those who fall within such class and those who do not. (2 Cooley, Constitutional Limitations, 824-825).[25]

Although the equal protection clause of the Constitution does not forbid classification, it is imperative that the classification should be based on real and substantial differences having a reasonable relation to the subject of the particular legislation.[26] If classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and

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[24] 101 Phil. 1155 (1957).

[25] *Id.* at 1164.

[26] *Mayor Villegas v. Hiu Chiong Tsai Pao Ho*, 175 Phil. 443, 448 (1978).

future conditions, the classification does not violate the equal protection guarantee.[27]

R.A. No. 9646 was intended to provide institutionalized government support for the development of "a corps of highly respected, technically competent, and disciplined real estate service practitioners, knowledgeable of internationally accepted standards and practice of the profession."[28] Real estate developers at present constitute a sector that hires or employs the largest number of brokers, salespersons, appraisers and consultants due to the sheer number of products (lots, houses and condominium units) they advertise and sell nationwide. As early as in the '70s, there has been a proliferation of errant developers, operators or sellers who have reneged on their representation and obligations to comply with government regulations such as the provision and maintenance of subdivision roads, drainage, sewerage, water system and other basic requirements. To protect the interest of home and lot buyers from fraudulent acts and manipulations perpetrated by these unscrupulous subdivision and condominium sellers and operators, P.D. No. 957 was issued to strictly regulate housing and real estate development projects. Hence, in approving R.A. No. 9646, the legislature rightfully recognized the necessity of imposing the new licensure requirements to *all* real estate service practitioners, including and more importantly, those real estate service practitioners working for real estate developers. Unlike individuals or entities having isolated transactions over their own property, real estate developers sell lots, houses and condominium units in the ordinary course of business, a business which is highly regulated by the State to ensure the health and safety of home and lot buyers.

The foregoing shows that substantial distinctions do exist between ordinary property owners exempted under Section 28(a) and real estate developers like petitioners, and the classification enshrined in R.A. No. 9646 is reasonable and relevant to its

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[27] *JMM Promotion and Management, Inc. v. Court of Appeals, supra* note 20, at 102.

[28] See Explanatory Note of Senate Bill No. 1644.

legitimate purpose. The Court thus rules that R.A. No. 9646 is valid and constitutional.

Since every law is presumed valid, the presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.[29]

Indeed, "all presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted."[30]

WHEREFORE, the petition is **DENIED.** The Decision dated July 12, 2011 of the Regional Trial Court of Manila, Branch 42 in Civil Case No. 10-124776 is hereby **AFFIRMED and UPHELD.**

No pronouncement as to costs.

SO ORDERED.

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

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[29] *Drilon v. Lim,* G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140.

[30] *Lawyers Against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management,* G.R. No. 164987, April 24, 2012, 670 SCRA 373, 390-391, citing *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 74 (1974).

FIRST DIVISION

[A.C. No. 4545. February 5, 2014]

CARLITO ANG, *complainant, vs.* **ATTY. JAMES JOSEPH GUPANA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; VIOLATION OF NOTARIAL LAW IS AN INFRACTION WHERE THE LIABILITY ATTACHES NOT ONLY AS A NOTARY PUBLIC BUT ALSO AS A LAWYER.— [T]he Court finds respondent administratively liable for violation of his notarial duties when he failed to require the personal presence of Candelaria Magpayo when he notarized the Affidavit of Loss which Candelaria allegedly executed on April 29, 1994. Section 1 of Public Act No. 2103, otherwise known as the Notarial Law x x x [requires] that the party acknowledging must appear before the notary public or any other person authorized to take acknowledgments of instruments or documents. In the case at bar, the *jurat* of the Affidavit of Loss stated that Candelaria subscribed to the affidavit before respondent on April 29, 1994, at Mandaue City. Candelaria, however, was already dead since March 26, 1991. Hence, it is clear that the *jurat* was made in violation of the notarial law. Indeed, respondent averred in his position paper before the IBP that he did not in fact know Candelaria personally before, during and after the notarization thus admitting that Candelaria was not present when he notarized the documents. x x x A notary public's function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity. It devolves upon respondent to act with due care and diligence in stamping fiat on the questioned documents. Respondent's failure to perform his duty as a notary public resulted in undermining the integrity of a notary public and in degrading the function of notarization. Hence, he should be liable for his infraction, not only as a notary public but also as a lawyer. As a lawyer commissioned as notary public, respondent is mandated to subscribe to the sacred duties appertaining to his office, such duties being dictated by public policy impressed with public interest. Faithful observance and utmost respect

of the legal solemnity of the oath in an acknowledgment or *jurat* is sacrosanct. Simply put, such responsibility is incumbent upon respondent and failing therein, he must now accept the commensurate consequences of his professional indiscretion.

2. ID.; ID.; ID.; WHERE VIOLATION OF NOTARIAL LAW CONSTITUTES MISCONDUCT AS WELL.— Respondent likewise violated Rule 9.01, Canon 9, of the Code of Professional Responsibility which provides that "*[a] lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing*." x x x In merely relying on his clerical staff to determine the completeness of documents brought to him for notarization, limiting his participation in the notarization process to simply inquiring about the identities of the persons appearing before him, and in notarizing an affidavit executed by a dead person, respondent is liable for misconduct. Under the facts and circumstances of the case, the revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years and suspension from the practice of law for one year are in order.

APPEARANCES OF COUNSEL

Jes Gal Sarmiento for complainant.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review under Rule 139-B, Section 12(c) of the Rules of Court assailing Resolution Nos. XVII-2005-141[1] and XVIII-2008-698[2] of the Board of Governors of the Integrated Bar of the Philippines (IBP). The IBP Board of Governors found respondent Atty. James Joseph Gupana administratively liable and imposed on him the penalty of suspension for one year from the practice of law and the

[1] *Rollo*, Vol. I, p. 462.

[2] *Rollo*, Vol. III, p. 67.

revocation of his notarial commission and disqualification from reappointment as notary public for two years.

The case stemmed from an affidavit-complaint[3] filed by complainant Carlito Ang against respondent. Ang alleged that on May 31, 1991, he and the other heirs of the late Candelaria Magpayo, namely Purificacion Diamante and William Magpayo, executed an Extra-judicial Declaration of Heirs and Partition[4] involving Lot No. 2066-B-2-B which had an area of 6,258 square meters and was covered by Transfer Certificate of Title (TCT) No. (T-22409)-6433. He was given his share of 2,003 square meters designated as Lot No. 2066-B-2-B-4, together with all the improvements thereon.[5] However, when he tried to secure a TCT in his name, he found out that said TCT No. (T-22409)-6433 had already been cancelled and in lieu thereof, new TCTs[6] had been issued in the names of William Magpayo, Antonio Diamante, Patricia Diamante, Lolita D. Canque, Gregorio Diamante, Jr. and Fe D. Montero.

Ang alleged that there is reasonable ground to believe that respondent had a direct participation in the commission of forgeries and falsifications because he was the one who prepared and notarized the Affidavit of Loss[7] and Deed of Absolute Sale[8] that led to the transfer and issuance of the new TCTs. Ang pointed out that the Deed of Absolute Sale which was allegedly executed by Candelaria Magpayo on April 17, 1989, was antedated and Candelaria Magpayo's signature was forged as clearly shown by the Certification[9] issued by the Office of the Clerk of Court of the Regional Trial Court (RTC) of Cebu. Further, the certified true copy of page 37, Book No. XII, Series of 1989 of respondent's Notarial Report indubitably showed

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[3] *Rollo*, Vol. I, pp. 1-7.

[4] *Id.* at 8-10.

[5] *Id.* at 9.

[6] *Id.* at 11-20.

[7] *Id.* at 23.

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

[9] *Id.* at 24.

that Doc. No. 181 did not refer to the Deed of Absolute Sale, but to an affidavit.[10] As to the Affidavit of Loss, which was allegedly executed by the late Candelaria Magpayo on April 29, 1994, it could not have been executed by her as she died[11] three years prior to the execution of the said affidavit of loss.

Ang further alleged that on September 22, 1995, respondent made himself the attorney-in-fact of William Magpayo, Antonio Diamante, Patricia Diamante, Lolita Canque, Gregorio Diamante, Jr. and Fe D. Montero, and pursuant to the Special Power of Attorney in his favor, executed a Deed of Sale[12] selling Lot No. 2066-B-2-B-4 to Lim Kim So Mercantile Co. on October 10, 1995. Ang complained that the sale was made even though a civil case involving the said parcel of land was pending before the RTC of Mandaue City, Cebu.[13]

In his Comment,[14] respondent denied any wrongdoing and argued that Ang is merely using the present administrative complaint as a tool to force the defendants in a pending civil case and their counsel, herein respondent, to accede to his wishes. Respondent averred that Ang had filed Civil Case No. Man-2202 before Branch 55 of the Mandaue City RTC. He anchored his claim on the Extra-judicial Declaration of Heirs and Partition and sought to annul the deed of sale and prayed for reconveyance of the subject parcel of land. During the pre-trial conference in Civil Case No. Man-2202, Ang admitted that he is not an heir of the late Candelaria Magpayo but insisted on his claim for a share of the lot because he is allegedly the son of the late Isaias Ang, the common-law husband of Candelaria Magpayo. Because of his admission, the notice of *lis pendens* annotated in the four certificates of title of the land in question were ordered cancelled and the land effectively became available for disposition. Ang sought reconsideration of the order, but

[10] *Id.* at 25.

[11] *Id.* at 26.

[12] *Id.* at 33-34.

[13] *Id.* at 466.

[14] *Id.* at 54-58.

a compromise was reached that only one TCT (TCT No. 34266) will be annotated with a notice of *lis pendens*. Respondent surmised that these developments in Civil Case No. Man-2202 meant that Ang would lose his case so Ang resorted to the filing of the present administrative complaint. Thus, respondent prayed for the dismissal of the case for being devoid of any factual or legal basis, or in the alternative, holding resolution of the instant case in abeyance pending resolution of Civil Case No. Man-2202 allegedly because the issues in the present administrative case are similar to the issues or subject matters involved in said civil case.

Investigating Commissioner Lydia A. Navarro of the IBP Commission on Bar Discipline, to whom the case was referred for investigation, report and recommendation, submitted her Report and Recommendation[15] finding respondent administratively liable. She recommended that respondent be suspended from the practice of law for three months. She held that respondent committed an unethical act when he allowed himself to be an instrument in the disposal of the subject property through a deed of sale executed between him as attorney-in-fact of his client and Lim Kim So Mercantile Co. despite his knowledge that said property is the subject of a pending litigation before the RTC of Mandaue City, Cebu. The Investigating Commissioner additionally found that respondent "delegated the notarial functions to the clerical staff of their office before being brought to him for his signature." This, according to the commissioner, "must have been the reason for the forged signatures of the parties in the questioned document…as well as the erroneous entry in his notarial register…."[16] Nonetheless, the Investigating Commissioner merely reminded respondent to be more cautious in the performance of his duties as regards his infraction of his notarial duties. She held,

> Respondent should have been more cautious in his duty as notary public which requires that the party subscribing to the authenticity of the document should personally appear and sign the same before

[15] *Id.* at 463-471.

[16] *Id.* at 470.

respondent's actual presence. As such notary public respondent should not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the bar in accordance with Rule 9.01[17] of the Code of Professional Responsibility.[18]

On November 12, 2005, the Board of Governors of the IBP issued Resolution No. XVII-2005-141,[19] adopting the findings of the Investigating Commissioner but modifying the recommended penalty. Instead of suspension for three months, the Board recommended the penalty of suspension from the practice of law for one year and revocation of respondent's notarial commission and disqualification from reappointment as notary public for two years.

Respondent filed a motion for reconsideration,[20] arguing that it was neither illegal nor unethical for a lawyer to accept appointment as attorney-in-fact of a client to sell a property involved in a pending litigation and to act as such. He further contended that granting that his act was unethical, the modified penalty was evidently too harsh and extremely excessive considering that the act complained of was not unlawful and done without malice.

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[17] Rule 9.01. – A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

[18] *Rollo*, Vol. 1, p. 470.

[19] *Id.* at 462. The Resolution reads,

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and 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 considering Respondent's allowed himself [sic] to be an instrument as attorney-in-fact of his client, Atty. James Joseph Gupana is hereby SUSPENDED from the practice of law for one (1) year and Respondent's notarial commission is Revoked and Disqualified [sic] from reappointment as Notary Public for two (2) years.

[20] *Id.* at 476-480.

On December 11, 2008, the IBP Board of Governors adopted Resolution No. XVIII-2008-698[21] denying respondent's motion for reconsideration and affirming Resolution No. XVII-2005-141. Hence, this petition for review.

Respondent reiterates that being commissioned by his own clients to sell a portion of a parcel of land, part of which is involved in litigation, is not *per se* illegal or unethical. According to him, his clients got his help to sell part of the land and because they were residing in different provinces, they executed a Special Power of Attorney in his favor.[22]

We affirm the resolution of the IBP Board of Governors finding respondent administratively liable.

After reviewing the records of the case, the Court finds that respondent did not act unethically when he sold the property in dispute as the sellers' attorney-in-fact because there was no more notice of *lis pendens* annotated on the particular lot sold. Likewise, the Court finds no sufficient evidence to show that the Deed of Absolute Sale executed by Candelaria Magpayo on April 17, 1989 was antedated.

However, the Court finds respondent administratively liable for violation of his notarial duties when he failed to require the personal presence of Candelaria Magpayo when he notarized the Affidavit of Loss which Candelaria allegedly executed on April 29, 1994. Section 1 of Public Act No. 2103, otherwise known as the Notarial Law, explicitly provides:

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[21] *Rollo*, Vol. III, p. 67. The Resolution reads,

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Recommendation of the Board of Governors First Division 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, the Motion for Reconsideration is hereby DENIED and Resolution No. XVII-2005-141 of the Board of Governors dated 12 November 2005 Suspending Atty. James Joseph Gupana from the practice of law for one (1) year and Disqualification from reappointment as Notary Public for two (2) years is AFFIRMED.

[22] *Rollo*, Vol. II, pp. 21-22.

> Sec. 1. x x x
>
> (a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

From the foregoing, it is clear that the party acknowledging must appear before the notary public or any other person authorized to take acknowledgments of instruments or documents.[23] In the case at bar, the jurat of the Affidavit of Loss stated that Candelaria subscribed to the affidavit before respondent on April 29, 1994, at Mandaue City. Candelaria, however, was already dead since March 26, 1991. Hence, it is clear that the jurat was made in violation of the notarial law. Indeed, respondent averred in his position paper before the IBP that he did not in fact know Candelaria personally before, during and after the notarization[24] thus admitting that Candelaria was not present when he notarized the documents.

Time and again, we have held that notarization of a document is not an empty act or routine.[25] Thus, in *Bernardo v. Atty. Ramos*,[26] the Court emphasized the significance of the act of notarization, to wit:

> The importance attached to the act of notarization cannot be overemphasized. Notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.

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[23] *Coronado v. Atty. Felongco*, 398 Phil. 496, 502 (2000).

[24] *Rollo*, Vol. I, p. 384.

[25] *Gerona v. Atty. Datingaling*, 446 Phil. 203, 216 (2003); *Coronado v. Atty. Felongco*, *supra* note 23.

[26] 433 Phil. 8, 15-16 (2002).

Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.

For this reason notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Hence a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

A notary public's function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity.[27] It devolves upon respondent to act with due care and diligence in stamping fiat on the questioned documents. Respondent's failure to perform his duty as a notary public resulted in undermining the integrity of a notary public and in degrading the function of notarization. Hence, he should be liable for his infraction, not only as a notary public but also as a lawyer.

As a lawyer commissioned as notary public, respondent is mandated to subscribe to the sacred duties appertaining to his office, such duties being dictated by public policy impressed with public interest. Faithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or *jurat* is sacrosanct. Simply put, such responsibility is incumbent upon respondent and failing therein, he must now accept the commensurate consequences of his professional indiscretion.[28] As the Court has held in *Flores v. Chua*,[29]

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[27] *Follosco v. Atty. Mateo*, 466 Phil. 305, 312 (2004).

[28] *Villarin v. Atty. Sabate, Jr.*, 382 Phil. 1, 6-7 (2000).

[29] 366 Phil. 132, 153 (1999).

Where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. The Code of Professional Responsibility also commands him not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession…. (Emphasis supplied.)

Respondent likewise violated Rule 9.01, Canon 9, of the Code of Professional Responsibility which provides that "*[a] lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing*." Respondent averred in his position paper that it had been his consistent practice to course through clerical staff documents to be notarized. Upon referral, said clerical staff investigates whether the documents are complete as to the fundamental requirements and inquires as to the identity of the individual signatories thereto. If everything is in order, they ask the parties to sign the documents and forward them to him and he again inquires about the identities of the parties before affixing his notarial signature.[30] It is also his clerical staff who records entries in his notarial report. As aforesaid, respondent is mandated to observe with utmost care the basic requirements in the performance of his duties as a notary and to ascertain that the persons who signed the documents are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. In merely relying on his clerical staff to determine the completeness of documents brought to him for notarization, limiting his participation in the notarization process to simply inquiring about the identities of the persons appearing before him, and in notarizing an affidavit executed by a dead person, respondent is liable for misconduct. Under the facts and circumstances of the case, the revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years and suspension from the practice of law for one year are in order.[31]

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[30] *Rollo*, Vol. I, pp. 383-384.

[31] See *Lanuzo v. Atty. Bongon*, 587 Phil. 658, 662 (2008).

WHEREFORE, respondent Atty. James Joseph Gupana is found administratively liable for misconduct and is **SUSPENDED** from the practice of law for one year. Further, his notarial commission, if any, is **REVOKED** and he is disqualified from reappointment as Notary Public for a period of two years, with a stern warning that repetition of the same or similar conduct in the future will be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts all over the country. Let a copy of this Decision likewise be attached to the personal records of respondent.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Reyes, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-11-2903. February 5, 2014]
(Formerly A.M. OCA IPI No. 09-2181-MTJ)

ANGELITO R. MARQUEZ, EDUARDO R. MARQUEZ, CRISTINA M. OCAMPO, CARMEN MARQUEZ-ROSAS, HEIRS OF ERNESTO MARQUEZ, RENATO R. MARQUEZ, ALFREDO R. MARQUEZ, FRED EVANGELISTA, JOSE MACALINO, SANTIAGO MARQUEZ, SPOUSES FREDDIE and JOCELYN FACUNLA, SPOUSES RODRIGO and VIRGINIA MAZON, SPOUSES ALFONSO and LEONILA CASCO, SPOUSES BENJAMIN and PRISCILLA BUENAVIDES, EDUARDO FACUNLA, and ALICIA A. VILLANUEVA, *complainants, vs.* **JUDGE VENANCIO M. OVEJERA in his capacity**

as presiding judge of Municipal Trial Court of Paniqui, Tarlac, and SHERIFF IV LOURDES E. COLLADO, Regional Trial Court, Branch 67, Paniqui, Tarlac, *respondents.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; FAILURE TO COMPLY WITH THE LEGAL REQUIREMENT IN THE SUBMISSION OF STATEMENT OF ASSETS, LIABILITIES, AND NETWORTH (SALN); FINE, IMPOSED.— Based on Section 8 of RA 6713 as above-stated, "all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like," should be declared by the public official in his or her SALN. In this case, however, it was established, through Collado's admission, that she only declared the original amount of her time deposits in her SALN for the years 2004 and 2005, and did not disclose the interests which had eventually accrued on the same. Accordingly, Collado fell short of the legal requirement stated under Section 8 of RA 6713 and thus should be held administratively liable for said infraction. x x x As for the appropriate penalty, Section 11 of RA 6713 states that "[a]ny public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished [with, among others,] a fine not exceeding the equivalent of six (6) months' salary x x x depending on the gravity of the offense after due notice and hearing by the appropriate body or agency." Consistent with existing jurisprudence, the Court finds that the penalty of a fine in the amount of ₱5,000.00 is amply justified considering that Collado's misstep in her SALN for the years 2004 and 2005 appears to be her first offense, adding too that same does not appear to have been attended by any bad faith or fraudulent intent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Courts resolution is a Consolidated Administrative Complaint [1] (subject complaint) filed against respondents Judge Venancio M. Ovejera (Judge Ovejera) and Sheriff IV Lourdes E. Collado (Collado) for abuse of authority, disregard of due process, misuse and fabrication of judicial orders, arrogance and conduct unbecoming of an officer of the court, and, with respect to Collado, violations of: (*a*) Republic Act No. (RA) 6713, [2] otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees," particularly the provisions on the submission of Statements of Assets, Liabilities and Net Worth (SALN) of public officials and employees; and (*b*) RA 9160,[3] otherwise known as the "Anti-Money Laundering Act of 2001" (AMLA), as amended by RA 9194[4] and RA 10167.[5]

The Facts

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

[2] Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES."

[3] Entitled "AN ACT DEFINING THE CRIME OF MONEY LAUNDERING, PROVIDING PENALTIES THEREFOR AND FOR OTHER PURPOSES."

[4] Entitled "AN ACT AMENDING REPUBLIC ACT NO. 9160, OTHERWISE KNOWN AS THE 'ANTI-MONEY LAUNDERING ACT OF 2001.'"

[5] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-MONEY LAUNDERING LAW, AMENDING FOR THE PURPOSE SECTIONS 10 AND 11 OF REPUBLIC ACT NO. 9160, OTHERWISE KNOWN AS THE ANTI-MONEY LAUNDERING ACT OF 2001, AS AMENDED, AND FOR OTHER PURPOSES."

Complainants Angelito R. Marquez, Eduardo R. Marquez, Cristina M. Ocampo, Carmen Marquez-Rosas, Heirs of Ernesto Marquez, Renato R. Marquez, Alfredo R. Marquez, Fred Evangelista, Jose Macalino, and Santiago Marquez were the defendants in **Civil Case No. 1330**, entitled "*Jose Labutong v. Eduardo R. Marquez, et al.,*" involving a suit for unlawful detainer and damages, while complainants Spouses (Sps.) Freddie and Jocelyn Facunla, Sps. Rodrigo and Virginia Mazon, Sps. Alfonso and Leonila Casco, Sps. Benjamin and Priscilla Buenavides, Eduardo Facunla, and Alicia A. Villanueva (collectively, complainants) were the defendants in **Civil Case No. 1416**, entitled "*Agueda Garlitos, et al. v. Sps. Benjamin & Priscilla Buenavides, et al.,*" involving a suit for recovery of possession and damages. Both cases were filed before the Municipal Trial Court of Paniqui, Tarlac, and raffled to the sala of Judge Ovejera. Eventually, the aforementioned cases were decided against complainants.[6]

For their part, the complainants involved in Civil Case No. 1330 appealed the MTC decision adverse to them to the Regional Trial Court of Paniqui Tarlac, Branch 67 (RTC). The appeal was, however, dismissed on June 7, 2007,[7] leading to the issuance of a writ of execution on January 15, 2008.[8] Due to said complainants' failure to vacate the premises, a writ of demolition was issued on April 15, 2008.[9] Maintaining that there was a pending appeal before the Court of Appeals involving the same parties, the latter moved[10] for the stoppage of the writ of demolition's implementation, but the same was denied in an Order[11] dated March 30, 2009 issued by Judge Ovejera wherein

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[6] See the Decision dated January 19, 2007 in Civil Case No. 1330 (*rollo*, pp. 28-35) and the Decision dated March 9, 2009 in Civil Case No. 1416 (*id.* at 115-118).

[7] *Id.* at 39-40 and 171.

[8] *Id.* at 37-38.

[9] *Id.* at 171.

[10] *Id.* at 41-42.

[11] *Id.* at 44.

it was enunciated that the proffered ground is not one which could validly stay the implementation of a writ of execution/ demolition. Similarly, a writ of execution was issued in Civil Case No. 1416 on May 21, 2009,[12] followed by a writ of demolition[13] on August 7, 2009 due to the failure of the complainants in said case to remove the improvements involved therein. Collado, in her capacity as sheriff, was tasked to implement the writs of demolition issued in both cases.[14]

Feeling aggrieved, complainants filed the subject complaint before the Office of the Court A dministrator (OCA) on August 25, 2009, docketed as A.M. OCA IPI No. 09-2181-MTJ, imputing abuse of authority, disregard of due process, misuse and fabrication of judicial orders, arrogance and conduct unbecoming of an officer of the court against Ovejera and Collado in relation to the issuance and implementation of the afore-stated writs of demolition. In addition, Collado was charged with violating the AMLA and failure to disclose in her S A L N for the years 2004 and 2005 certain time deposits (subject time deposits) with the Moncada Womens Credit Corporation (MW CC) in the following amounts: (*a*) ₱200,100.00 on September 3, 2003; (*b*) ₱300,100.00 on December 29, 2003; (*c*) ₱400,100.00 on January 28, 2004; (*d*) ₱400,100.00 on January 28, 2004; (*e*) ₱500,100.00 on April 28, 2004; (*f*) ₱600,100.00 on April 28, 2004; (*g*) ₱500,100.00 in July 2004; and (*h*) ₱800,100.00 on October 25, 2004.[15]

In his Comment,[16] Judge Ovejera denied the charges and contended that the complaint was baseless and failed to state the specific acts complained. He maintained that the writs of execution and demolition were issued in accordance with law

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[12] *Id.* at 119-120.

[13] *Id.* at 121-122.

[14] See undated Sheriff's Report in Civil Case No. 1330 (*id.* at 111) and Sheriff's Report dated September 17, 2009 in Civil Case No. 1416 (*id.* at 124).

[15] See Complaint, *id.* at 1; see also *id.* at 19-23.

[16] *Id.* at 94-100.

and pointed out that a similar administrative case, i.e., OCA IPI NO. 09-2168 MTJ, had already been filed against him by the same complainants and dismissed by the Court in a Resolution dated November 25, 2009.[17]

Collado also filed her Comment,[18] denying any abuse of authority on her part and contending that she was merely implementing a lawful order of the court. She likewise claimed that she did not misuse or fabricate a judicial order, explaining that complainants were only misled by the caption indicated in her correspondence to the Barangay Captain relative to the writ of demolition issued in Civil Case No. 1330. Finally, she questioned the authenticity of the documents submitted by complainants for her alleged violation of the A MLA and refused to comment on the same for being premature.[19]

The Action and Recommendation of the OCA

In a Memorandum [20] dated November 5, 2010, the OCA found no factual and legal bases to support the complaint against Judge Ovejera and Collado for violations of their administrative and judicial functions. Nonetheless, finding that Collado did not indicate in her S A L N for the years 2004 and 2005 the amounts indicated in the subject time deposits,[21] the OCA recommended that the matter be re-docketed as a regular administrative case for possible violations of the pertinent provisions on SALN submission and the A MLA , and that the same be referred to the Executive Judge of the RTC for further investigation, report and recommendation. The OCAs recommendations were adopted by the Court in a Resolution [22] dated February 2, 2011, and the case was re-docketed as A .M. No. P-11-2903.

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[17] *Id.* at 95.

[18] *Id.* at 92-93.

[19] *Id.*

[20] *Id.* at 170-177.

[21] *Id.* at 176.

[22] *Id.* at 178-179.

In her Report and Findings[23] dated June 3, 2011, RTC Executive Judge Liberty O. Castañeda (Executive Judge) recommended the dismissal of the complaint against Collado, finding that: (*a*) while the imputed amounts on the subject time deposits were not specifically stated in her SA L N for the years 2004 and 2005 as Collado herself admitted,[24] she nonetheless declared the initial capital thereof as an asset therein, (*b*) she honestly believed then that the interest on said deposits may only be declared when the certificates of time deposit were converted into cash; and (*c*) she had no intent to falsify her SALN. The Executive Judge also did not find any violation of the AMLA absent any evidence that Collado's investment with the MWCC was sourced from any unlawful activity enumerated under the subject law, noting further that Collado had not made a single deposit of ₱500,000.00 or more at any instance as shown in MWCCs Certification[25] dated May 4, 2011. The matter was then referred to the OCA for evaluation, report and recommendation.[26]

In a Memorandum [27] dated August 13, 2012, the OCA , based on a Certification [28] dated January 22, 2010 of the Office of Administrative Services (OAS Certification), found that Collado failed to submit her S A L N for the years 2000 and 2001. Citing Section 8 of RA 6713, among others, the OCA pointed out that every public officer is mandated to submit a true, detailed and sworn statement of his assets and liabilities. However, it no longer delved on the issue of whether or not Collado's time deposits were reflected in her S A L N for the years 2004 and 2005 considering that she had already retired in 2011 and no copies of the subject SALNs could be found in her 201 file.

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[23] *Id.* at 277-278.

[24] *Id.* at 277.

[25] *Id.* at 273.

[26] *Id.* at 279. See Resolution dated October 19, 2011.

[27] *Id.* at 285-291.

[28] *Id.* at 88.

Accordingly, the OCA recommended that Collado be fined in an amount equivalent to her salary for six (6) months.

The Issue Before the Court

The lone issue left for the Court's resolution is whether or not Collado should be held administratively liable for violating the pertinent provisions on SALN submission.

The Court's Ruling

The Court concurs with the OCA , but modifies the penalty imposed to a fine of only ₱5,000.00.

Section 8[29] of RA 6713, requires all public officials and employees to accomplish and submit declarations under oath of their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under 18 years of age living in their households. In this relation, the same provision mandates full disclosure of the concerned public official's (*a*) real property, its improvements, acquisition costs, assessed value and current fair market value, (*b*) personal property and acquisition cost, (*c*) **all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like**, (*d*) liabilities, and (*e*) all business interests and financial connections.

Verily, the requirement of SALN submission is aimed at curtailing and minimizing the opportunities for official corruption,

[29] Section 8. Statements and Disclosure. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

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as well as at maintaining a standard of honesty in the public service. [30] With such disclosure, the public would, to a reasonable extent, be able to monitor the affluence of public officials, and, in such manner, provides a check and balance mechanism to verify their undisclosed properties and/or sources of income. [31]

Based on Section 8 of RA 6713 as above-stated, "all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like," should be declared by the public official in his or her SALN. In this case, however, it was established, through Collado's admission, [32] that she only declared the original amount of her time deposits in her S A L N for the years 2004 and 2005, and did not disclose the interests which had eventually accrued on the same. Accordingly, Collado fell short of the legal requirement stated under Section 8 of RA 6713 and thus should be held administratively liable for said infraction.

The Court cannot hold Collado administratively liable for her purported failure to submit her S A L N for the years 2000 and 2001 as she was not given an opportunity to be heard on this matter considering that said infraction was not included in the original charge.

As for the appropriate penalty, Section 11 of RA 6713 states that "[a]ny public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished [with, among others,] a fine not exceeding the equivalent of six (6) months' salary x x x depending on the gravity of the offense after due notice and hearing by the appropriate body or agency." Consistent with existing jurisprudence, [33] the Court finds that the penalty of a fine in

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[30] *The Ombudsman v. Valeroso*, 548 Phil. 688, 697-698 (2007). See also *Flores v. Montemayor*, G.R. No. 170146, August 25, 2010, 629 SCRA 178.

[31] See *The Ombudsman v. Valeroso*, *id.* at 698.

[32] *Rollo*, p. 277.

[33] See *OCA v. Usman*, A.M. No. SCC-08-12 (Formerly OCA IPI No.

the amount of ₱5,000.00 is amply justified considering that Collado's misstep in her SALN for the years 2004 and 2005 appears to be her first offense, adding too that same does not appear to have been attended by any bad faith or fraudulent intent.

Separately, the Court finds it unnecessary to delve on Collado's purported violation of the A MLA since the complaint and the records are bereft of any substantial basis on this score. In similar regard, the complaint against Judge Ovejera appears to be unsupported by any substantial basis, and is therefore dismissed.

WHEREFORE, respondent Lourdes E. Collado is found **GUILTY** of violating Section 8 in relation to Section 11 of Republic Act No. 6713 for her failure to duly comply with the legal requirements pertaining to the submission of her Statement of Assets, Liabilities and Net Worth (SALN) and is thus **FINED** the amount of ₱5,000.00 to be deducted from her retirement benefits in view of her compulsory retirement on June 11, 2011. On the other hand, the administrative complaint against Judge Venancio M. Ovejera is **DISMISSED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

09-2181-MTJ), October 19, 2011, 659 SCRA 411, 416-417 wherein the Court held as follows:

In the present case, respondent clearly violated the above-quoted laws when he failed to file his SALN for the years 2004-2008. He gave no explanation either why he failed to file his SALN for five (5) consecutive years. While every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the Judiciary. Hence, judges are strictly mandated to abide with the law, the Code of Judicial Conduct and with existing administrative policies in order to maintain the faith of our people in the administration of justice.

Considering that this is the first offense of the respondent, albeit for five years, the Court shall impose a fine of only Five Thousand Pesos (₱5,000.00) with warning.

FIRST DIVISION

[G.R. No. 167286. February 5, 2014]

INTERNATIONAL SCHOOL MANILA and/or BRIAN McCAULEY, *petitioners, vs.* **INTERNATIONAL SCHOOL ALLIANCE OF EDUCATORS (ISAE) and members represented by RAQUEL DAVID CHING, President, EVANGELINE SANTOS, JOSELYN RUCIO and METHELYN FILLER,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATIONS; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; FAILURE TO MEET THE REASONABLE STANDARDS SET BY THE SCHOOL IN TEACHING A PARTICULAR SUBJECT CONSTITUTES GROSS INEFFICIENCY WARRANTING EMPLOYEE'S DISMISSAL.— From the very beginning of her tenure as a teacher of the Filipino language, the recurring problem observed of Santos was that her lesson plans lacked details and coherent correlation to each other, to the course, and to the curriculum, which in turn affected how lessons and instructions were conveyed to the students. After Santos was placed in a Professional Growth Plan on March 29, 1996, petitioners observed a noticeable improvement on her part. In his memo dated May 24, 1996, then Assistant Principal Loy even stated that Santos's improvement was a result of her positive attitude in approaching her growth plan. Unfortunately, though, Santos could not sustain this progress. Not long after, the School administrators were again admonishing Santos for her vague lesson plans that lacked specifics. What can be gathered from a thorough review of the records of this case is that the inadequacies of Santos as a teacher did not stem from a reckless disregard of the welfare of her students or of the issues raised by the School regarding her teaching. Far from being tainted with bad faith, Santos's failings appeared to have resulted from her lack of necessary skills, in-depth knowledge, and expertise to teach the Filipino language at the standards required of her by the School. x x x The documentary evidence submitted by petitioners, the contents of which we laid down in detail in our statement of facts, pointed to the numerous instances when Santos failed

to observe the prescribed standards of performance set by the School in several areas of concern, not the least of which was her lack of adequate planning for her Filipino classes. Said evidence established that the School administrators informed Santos of her inadequacies as soon as they became apparent; that they provided constructive criticism of her planning process and teaching performance; and that regular conferences were held between Santos and the administrators in order to address the latter's concerns. In view of her slow progress, the School required her to undergo the remediation phase of the evaluation process through a Professional Growth Plan. Despite the efforts of the School administrators, Santos failed to show any substantial improvement in her planning process. Having failed to exit the remediation process successfully, the School was left with no choice but to terminate her employment.

2. ID.; ID.; ID.; ID.; OBSERVATIONS MADE BY SUPERIORS AND PEERS MAY BE CONSIDERED IN DETERMINING WHETHER THE EMPLOYEE WAS GROSSLY INEFFICIENT OR NOT.— Anent the conclusion of the Labor Arbiter that "the observations made by [Santos's] superior and peers could not be the basis for concluding or finding that she is grossly incompetent or inefficient," the Court finds the same utterly baseless. Far from being random and unstructured exercises, said observations were borne out of the evaluation procedures set up by the School in order to assist the members of its faculty to improve their performance. x x x Included in the supervision and evaluation process are formal and informal observations of a faculty member's performance in his/her classes. x x x From the foregoing, it is clear that the Labor Arbiter erred in not giving weight to the observations made by Santos's superiors and peers in determining whether she was grossly inefficient or not.

3. ID.; ID.; ID.; PROCEDURAL REQUIREMENTS IN THE DISMISSAL OF AN EMPLOYEE, COMPLIED WITH IN CASE AT BAR.— In this case, the School complied with the [procedural due process] requirements. After a thorough evaluation of Santos's performance, the School held a series of conferences and meetings with Santos, in order to improve her performance. On March 29, 1996, the School required Santos to undertake a Professional Growth Plan. Thereafter, when the intervention of the School failed to yield any considerable

improvement on Santos, McCauley wrote her a letter on April 10, 1997, which required her to explain in writing within forty-eight (48) hours why her employment should not be terminated in view of her failure to meet the standards of the School on very specific areas of concern. On April 16, 1997, Santos responded to McCauley's letter, asking why she was being required to explain. On April 21, 1997, McCauley wrote Santos a letter informing her that an administrative investigation would be conducted on April 23, 1997 where she would be given the opportunity to be heard. On April 23, 1997, an administrative investigation was conducted. Santos appeared therein with the assistance of ISAE President Ching. In a letter dated May 29, 1997, the School informed Santos of its decision to terminate her employment on the ground of her failure to meet the standards of the School, which as discussed was tantamount to gross inefficiency.

4. ID.; ID.; ID.; VALIDLY DISMISSED EMPLOYEE, AWARDED SEPARATION PAY IN VIEW OF THE LENGTH OF HER SERVICE.— In the instant case, the Court finds equitable and proper the award of separation pay in favor of Santos in view of the length of her service with the School prior to the events that led to the termination of her employment. To recall, Santos was first employed by the School in 1978 as a Spanish language teacher. During this time, the records of this case are silent as to the fact of any infraction that she committed and/or any other administrative case against her that was filed by the School. Thus, an award of separation pay equivalent to one-half (1/2) month pay for every year of service is awarded in favor of Santos on grounds of equity and social justice.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for petitioners.
Lauro Noel for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In this petition for review on *certiorari*,[1] petitioners International School Manila (hereafter the School) and Brian McCauley seek to set aside the Decision[2] dated November 17, 2004 and the Resolution[3] dated February 23, 2005 of the Court of Appeals in CA-G.R. SP No. 79031. The decision of the appellate court upheld the illegality of respondent **Evangeline Santos's** termination from employment in the School, while the assailed resolution denied the petitioners' motion for reconsideration.

The complaint filed before the Labor Arbiter involved three individual complainants, aside from the International School Alliance of Educators (ISAE).[4] However, the instant petition concerns only the case of Santos as the causes of action of the other complainants, Joselyn Rucio and Methelyn Filler, had since been dismissed by the Labor Arbiter and the Court of Appeals, respectively.

The Material Facts

Santos was first hired by the School in 1978 as a full-time Spanish language teacher. In April 1992, Santos filed for and was granted a leave of absence for the school year 1992-1993. She came back from her leave of absence sometime in August 1993.[5] Upon Santos's return to the School, only one class of Spanish was available for her to teach. Thus, for the school

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[1] *Rollo*, pp. 2-39.

[2] *Id.* at 41-64; penned by Associate Justice Renato C. Dacudao with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao, concurring.

[3] *Id.* at 66-67.

[4] The ISAE was the certified bargaining agent of the School's faculty members.

[5] According to respondents' Position Paper before the Labor Arbiter, the school year at the International School Manila commences in the month of August. (CA *rollo*, p. 151.)

year 1993-1994, Santos agreed to teach one class of Spanish and four other classes of Filipino that were left behind by a retired teacher.[6]

Since it was Santos's first time to teach Filipino, the School's high school administrators observed the way she conducted her classes. The results of the observations on her classes were summarized in Classroom Standards Evaluation Forms accomplished by the designated observers. In accordance with said forms, Santos was evaluated in the areas of Planning, the Teaching Act, Climate, Management and Communication.

On October 26, 1993, Dale Hill, then Assistant Principal, observed Santos's Filipino II class. In the Classroom Standards Evaluation Form,[7] Hill remarked that the lesson plan that Santos provided "was written with little detail given." Santos was also noted as needing improvement in the following criteria: (1) uses effective questioning techniques; (2) is punctual and time efficient; (3) states and enforces academic and classroom behavior expectations in a positive manner; and (4) reinforces appropriate behavior. Hill also stated that Santos's management of the class left much to be desired. Hill added that "[t]he beginning and the end of the class were poorly structured with students both coming late and leaving early with no apparent expectations to the contrary."

On January 17, 1994, Santos submitted to the Personnel Department of the School a memorandum/form,[8] which stated her assignment preference for the school year 1994-1995. She indicated therein that she planned to return to the School staff for the said school year and she did not prefer a change of teaching assignment.

On March 11, 1994, Hill observed Santos's Spanish I class. In the Classroom Standards Evaluation Form[9] he accomplished,

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[6] *Rollo*, pp. 428-429.

[7] *Id.* at 230.

[8] *Id.* at 355.

[9] *Id.* at 231.

Hill stated that Santos needed improvement on the following areas: (1) uses effective questioning techniques; (2) uses appropriate praise; (3) deals with students in a fair and consistent manner; (4) is punctual and time efficient; (5) states and enforces academic and classroom behavior expectations in a positive manner; (6) reinforces appropriate behavior; (7) organizes the classroom to enhance learning and minimize disruption; and (8) states expectations and ideas clearly.

On May 30, 1994, Hill completed a Summary Evaluation Form[10] of Santos's performance. Hill stated, among others, that Santos should improve on managing the students' punctuality and time efficiency. Hill added that instructions were not well stated and presented to the class. He said that Santos needed to identify and state positively the expectations she has for the students. In a Professional Standards Form[11] accomplished on the same date, Santos was found to be in need of improvement in these areas: (1) has in-depth knowledge of the appropriate subject matter; and (2) clearly defines consequences of inappropriate behavior and is consistent in follow through.

In the meantime, for the school year 1994-1995, Santos agreed to teach five classes of Filipino.[12] On November 7, 1994, Santos also informed the School of her assignment preference for the incoming school year 1995-1996. In a memorandum/form[13] submitted to the Personnel Department of the School, Santos indicated that she did not prefer a change of teaching assignment. In the school year 1995-1996, Santos again taught five classes of Filipino.[14]

On February 1, 1996, then Assistant Principal Peter Loy observed a Filipino IBS1 class of Santos. In the Classroom

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[10] *Id.* at 199.

[11] *Id.* at 232.

[12] *Id.* at 429, 476.

[13] *Id.* at 356.

[14] *Id.* at 476.

Standards Evaluation Form[15] he completed thereafter, Loy noted that Santos needed improvement on the following aspects: (1) has daily lesson plans written out; (2) incorporates a variety of activities, resources and teaching strategies into the lesson; (3) plans for the entire instructional period; (4) provides an instructional sequence which is clear and logical, leading to stated objectives; (5) uses effective questioning techniques; (6) develops rapport with and between students by creating a supportive environment; (7) is punctual and time efficient; and (8) reinforces appropriate behavior. Loy also observed that Santos did not meet the minimum standards in these areas of concern: (1) has clearly defined lesson objectives that tie into unit objectives as well as into the school curriculum; and (2) states and enforces academic and classroom behavior expectations in a positive manner.

On February 2, 1996, Loy wrote a memo[16] to Santos, calling her attention to the deficiencies in her planning, to wit:

> Good teaching is not something that happens spontaneously all the time. Good teaching is the result, in part, of hard work and planning. **Clearly the planning for your classes, as indicated by the absence of detailed lesson plans, has resulted in below standard instruction. This is simply not acceptable**. A review of your planning book shows less-than-skeletal entries with no detail or unification of direction of syllabus. You said that you had other written plans, but these were not visible nor used for reference during class. Relying solely on memory is not always the best approach. Although you are a veteran teacher with three decades of experience, you have been teaching Filipino for only two years during which time there have been important changes in the International Bacc[a]laureate structure. It is crucial that your plans, both medium and long range, be well constructed and written and then utilized. (Emphasis ours.)

In a memo[17] dated March 25, 1996, Loy commented on the outline of goals and activities of Santos as follows:

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[15] *Id.* at 236.

[16] *Id.* at 375-376.

[17] *Id.* at 377.

1. You do not address any of the comments made in the Classroom Standards Evaluation Form, nor how you plan to address those concerns. At present, your outline of activities for this semester is sketchy. That is, your general lesson topics are listed, but without any daily substance or sequence. One example, the area of planning, along with objectives and activities, is an area of major concern for us. It is vital to your growth plan that you submit your detailed lesson plans to Mrs. Villajuan daily and discuss these with her before the lesson and after to ensure direction and implementation. Thus, a daily meeting with your department chair is required.

On March 29, 1996, Loy sent another memo[18] to Santos, which required her to undergo the remediation phase[19] of the evaluation process through a Professional Growth Plan. Thus:

Given that planning is one of the areas of major concern, it is all the more disturbing that you have shown virtually no written planning for this quarter.

For the record, please note that we met on February 2, 1996, the day after I observed your class for the second time this school year. At that meeting, you were given a draft of my comments and concerns, along with a two[-] page memo. Since that date, I have received a

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[18] *Id.* at 382.

[19] *Id.* at 191. According to the School's Position Paper Regarding Professional Growth, Supervision and Evaluation of Faculty:

Category 3. Evaluation and Remediation.

Faculty members whose performance level is below the school's minimum level of expectations at any time will enter the "remediation" phase of the evaluation process. A faculty member will be clearly notified that he/she has entered remediation. During remediation, the faculty member and administrative supervisor will establish and carefully monitor a program designed to bring the faculty member's performance above the minimum level of expectations. If this program is successful, the employee will be informed that he/she has been removed from remediation. A faculty member who exits remediation successfully will be considered for further employment without prejudice. Should more time be needed to meet the school's expectations, the administration may extend a foreign hired expatriate's contract by one year instead of two. **If a faculty member is not able to meet the school's minimum performance expectations and exit remediation successfully, appropriate action regarding the faculty member's further employment will be taken.** (Emphasis ours.)

mere outline of your fourth quarter syllabus which contains virtually no specific plan of activity, action, or means of addressing the concerns. My memo of March 25 reiterates some of the concerns, while elaborating on the shortcomings of the outline you submitted that same day.

x x x x x x x x x

The impression you are creating is that planning for your classes is not taking place, nor is there any immediate movement towards improvement. This lack of attention on your part only serves to heighten our concern. Please find attached, therefore, my draft of your Growth Plan.

The March 29, 1996 Professional Growth Plan[20] of Santos, which she signed with then Principal Jeffrey Hammett, Assistant Principal Peter Loy, and Modern Languages Department Chair Normelita Villajuan, reads:

Goals:

Improve classroom instruction through the implementation of the areas marked as "does not meet minimum standards," "needs improvement," or "not observed" in classroom observations from October 1993 through February 1996, as well as concerns noted in your Summary Evaluation of May 30, 1994. These areas include PLANNING, THE TEACHING ACT, CLIMATE, MANAGEMENT as specified and dated below.

Initial focus for the first part of this GROWTH PLAN, namely the fourth quarter of SY 1995-96 will be on PLANNING. By focusing on planning first, other issues relative to climate and management may also be assisted. This Growth Plan will be reviewed and revised as necessary for SY 1996-97.

Actions:

1. Write daily lesson plans (2/96)

2. Have clearly defined lesson objectives that tie into unit objectives as well as into the school curriculum (2/96)

3. Incorporate a variety of activities, resources and teaching strategies into the lesson (2/96)

[20] NLRC Records, Vol. I, Exhibit 24.

4. Plan for the entire instructional period (2/96)

5. Provide an instructional sequence which is clear and logical, leading to stated objectives (2/96)

6. Use effective questioning techniques (2/96, 3/94, 10/93)

7. Provide sufficient guided practice and modeling to ensure success, particularly homework assignments (11/95)

8. Develop rapport with and between students by creating a supportive environment (2/96, 11/95)

9. Be punctual and time efficient (2/96, 3/94, 10/93)

10. State and enforce academic and classroom behavior expectations in a positive manner (2/96, 3/94, 10/93)

[11.] Reinforce appropriate behavior (2/96, 3/94, 10/93)

[12.] Organize the classroom to enhance learning and minimize disruption (11/95, 3/94)

In the memo[21] to Santos dated April 18, 1996, Loy commented that since the implementation of Santos's Professional Growth Plan, it was observed that there was noticeable improvement in the writing of her lesson plans and the same had a clearer sense of direction for her classes. Likewise, in the memo[22] dated April 26, 1996, Loy noted that Santos was observed to be taking steps to address the concerns in her Professional Growth Plan. In the succeeding memos to Santos dated May 10, 1996[23] and May 16, 1996,[24] Loy expressed his gladness at the progress of Santos and the positive effect of the Professional Growth Plan on her performance. Accordingly, in a memo[25] dated May 24, 1996, Loy advised Santos that her Professional Growth Plan had been revised as a result of her efforts and improvements.

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[21] *Rollo*, p. 385.

[22] *Id.* at 386.

[23] *Id.* at 388.

[24] *Id.* at 389.

[25] *Id.* at 390.

The May 24, 1996 Revised Professional Growth Plan[26] of Santos states:

Goals:

Improve classroom instruction through the implementation of the areas marked as "does not meet minimum standards," "needs improvement," or "not observed" in classroom observations from October 1993 through February 1996, as well as concerns noted in your Summary Evaluation of May 30, 1994. These areas include PLANNING, THE TEACHING ACT, CLIMATE, MANAGEMENT as specified and dated below.

Initial focus for the first part of this GROWTH PLAN was on PLANNING. Ms. Santos has shown improvement in areas #1-4 under Short Term Planning during the fourth quarter of SY 1995-1996. Having focused on planning first, other issues relative to climate and management may also have assisted and can now be directly addressed in the 1996-97 school year.

Actions:

I. Continue the following, which was an area of focus in SY 1995-96:

A. Short Term Planning

1. Write daily lesson plans (2/96)

2. Have clearly defined lesson objectives that tie into unit objectives as well as into the school curriculum (2/96)

3. Incorporate a variety of activities, resources and teaching strategies into the lesson (2/96)

4. Plan for the entire instructional period (2/96)

II. Focus on the following areas in need of improvement:

(Note: these items have been grouped by topic area in this revised growth plan and therefore re-numbered from the listing in the original growth plan)

B. Medium and Long Range Planning

5. Provide an instructional sequence which is clear and logical, leading to stated objectives (2/96)

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[26] NLRC Records, Vol. I, Exhibit 25.

6. Be punctual and time efficient (2/96, 3/94, 10/93)

C. Classroom Climate and Management

7. Develop rapport with and between students by creating a supportive environment (2/96, 11/95)

8. State and enforce academic and classroom behavior expectations in a positive manner (2/96, 3/94, 10/93)

9. Reinforce appropriate behavior (2/96, 3/94, 10/93)

10. Organize the classroom to enhance learning and minimize disruption (11/95, 3/94)

D. Teaching Techniques

11. Use effective questioning techniques (2/96, 3/94, 10/93)

12. Provide sufficient guided practice and modeling to ensure success, particularly homework assignments (11/95)

For the school year 1996-1997, Santos again taught five classes of Filipino.[27]

In a memo[28] dated September 6, 1996, Loy reminded Santos that, to support her planning and instruction, they agreed, among others, that she "would keep detailed daily lesson plans, medium and long range plans and syllabi, and copies of instructional materials used." Subsequently, in a memo[29] dated September 19, 1996, Loy noted that there seemed to be progress as regards the instruction that Santos would keep detailed lesson plans. Santos was then advised to continue and improve her focus on medium and long range plans.

Thereafter, it seemed that the positive reviews of Santos's performance were gradually replaced by renewed concerns on her planning. In a memo[30] dated October 4, 1996, Loy stated that:

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[27] *Rollo*, p. 477.

[28] *Id.* at 391.

[29] *Id.* at 392.

[30] *Id.* at 393.

[Santos] submitted a plan for the semester using a form from Anne Marie that will be used by the department to review the curriculum. **A review of the plan submitted by [Santos] indicates that the plan is vague; it needs additional thought and revision with regards to detail and timelines**. The vagueness of this plan is of concern because proper planning is one of the key areas in [Santos's] Professional Growth Plan. Proper planning was also noted in Mr. Hammett's observation comments x x x. [Santos] needs to revise this semestral plan for our next meeting. (Emphasis ours.)

In the following memo[31] dated October 18, 1996, Loy noted that Santos revised her plan for the semester, but the same could use another revision. Santos was directed to add more details to her plan.

On October 29, 1996, Loy observed the Conversational Filipino class of Santos. In the Classroom Standards Evaluation Form[32] he accomplished for that day, Loy observed that Santos needed improvement on the following areas: (1) has daily lesson plans written out; (2) has clearly defined lesson objectives that tie into unit objectives as well as into the school curriculum; and (3) reinforces appropriate behavior. Loy also remarked to Santos that:

[T]here is still noted deficiency in the planning of your classes overall. Although your lesson plans for Conversational Filipino and Filipino III are better organized than previously, **they are still vague, lack detail and are not clear as to how they fit into a well-sequenced unit**. They are still stand-alone lessons. **In addition, your last written lesson plan for Filipino I was for October 24 — two class meetings ago. For Filipino A IBS2, there was only one written lesson plan — for October 17, the first day of the quarter**. (Emphases ours.)

Thereafter, Loy's memo[33] dated November 14, 1996 sternly told Santos the following words:

Vangie, you stated that you had not revised your lesson plans, yet there was no reason. In light of my observation of your class on

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[31] *Id.* at 394.

[32] *Id.* at 237.

[33] *Id.* at 395.

October 29 which followed, planning remains a major concern. I voiced concern that, given the draft of my October 29 observation which had three notations which did not meet expectations, you had not responded to my request for a follow-up conference. x x x

Vangie, you need to plan thematic units and daily lessons for each class which are well sequenced and relevant to the unit. This is one of the major areas of concern in your Professional Growth Plan. For you not to address this issue from our previous meetings, and to have a planning book that does not reflect proper planning, does not address the concerns of that Growth Plan; instead the concerns not only persist, they become more problematic. Vangie, to quote you, you "play it by ear." Flexibility only works when you are flexible within a clear plan. Otherwise, "playing it by ear" is synonymous with "winging it day-by-day." You must plan, and you need to begin your second semester outlines now. To this end, I am asking that you present a draft of your second semester syllabi and plans at our next meeting."

The memo[34] of Loy on November 15, 1996, further stated:

Thank you for coming to speak with me as follow-up to our meeting yesterday and to share your impressions. You stated that you feel I am being too hard on you. However, when we reviewed your lesson planning book which you brought with you we noted the following:

- **For your Filipino 1 classes, there were lesson plans for November 6, 7 and 13, but no lesson plans for November 11 and 12.**
- **For your Conversational Filipino and Filipino 3 classes, there were at least three "lesson plans" with no activities listed.**
- **For your Filipino A1/S2, you had gone back to write, using a pen with a slightly different colored ink to fill in parts of the lesson plan which I noted as deficient in my observation report of October 29.**
- **There are no lesson plans for any class beyond today's date.**

Clearly, this indicates a lack of planning. With this as your planning guide, I cannot agree that I am "being too hard on you." As I have stated, your daily planning is often vague at best; your long term

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[34] *Id.* at 396.

planning does not exist in writing. A review of your planning book today only supports this. (Emphases ours.)

In the memo[35] dated December 6, 1996, Loy disclosed to Santos that:

Concern was expressed by both Mr. Hammett and myself that, after eight months working with your Professional Growth Plan, we are still focused on but one of the four major areas of concern. Still to be addressed, following Planning, are concerns under the Teaching Act, Climate and Management. The third quarter is a crucial one for you, Vangie. We need to move beyond the initial concern in the Growth Plan to work in the other areas as well.

On January 22, 1997, Loy observed the Filipino 3 class of Santos. The Classroom Standards Evaluation Form[36] he accomplished stated that Santos still needed improvement on the following aspects: (1) has daily lesson plans written out; (2) incorporates a variety of activities, resources and teaching strategies into the lesson; (3) provides an instructional sequence which is clear and logical, leading to stated objectives; and (4) states and enforces academic and classroom behavior expectations in a positive manner. Loy also remarked that Santos's "lesson plans do not give a clear sense of direction towards a specified goal other than to reach the end of the chapter and the book."

In his memo[37] dated January 24, 1997, Loy made known his apparent frustration at Santos's performance in this manner:

As I said today, Vangie, I find myself continuing to use the phrases "vague" and "lacking specifics" in reviewing your daily, unit, or semestral plans. Moreover, suggestions and contributions made in our meetings to address those concerns do not seem to affect your planning. In your lesson plans, your objectives are basic and elementary; your activities, vacuous. Objectives such as "enrich vocabulary," "identify the theme of the chapter," and "participate actively in discussion" (for a class of 7) are not fitting of a high school lesson

[35] *Id.* at 397.

[36] *Id.* at 373.

[37] *Id.* at 399.

plan, much less a pre-International Baccalaureate course. Your activities do not specify the format, criteria, analytical features, or relationship to the day's/course's objectives.

While you claim that you are doing much more than what you have in your lesson plans, my contention is then, that the plans do not accurately reflect the lesson. As it is, I entered a question mark next to "plans for the entire instructional period" because your plan gave so little direction about what you were planning that day. If you know what the specific objectives are, based on assessment goals, and you plan to include an activity as part of the lesson, include it in the plan and be specific about what it is, what the criteria are, and why it is important. (Emphasis ours.)

Since then, Loy continued to voice his concerns on the planning process of Santos. He noted on his memo[38] dated February 7, 1997 that the objectives in Santos's daily lesson plans were very generic and the activities listed were elementary and very basic. Judging from the lesson plans, Loy concluded that Santos's planning is still substandard. On February 28, 1997, Loy sent another memo[39] to Santos, which informed her in no uncertain terms that the growth they see was insufficient. Other than the substandard lessons, Loy commented that there was virtually no written work nor adequate direction in her syllabus. Loy also warned her that "[c]ontinuance in this manner without marked improvement cannot be tolerated."

In a memo[40] dated March 14, 1997, Loy called Santos's attention about a problem they discovered in one of her classes. Loy said:

With regards to IBS2 Filipino, three of the eight students did not submit world literature papers as required by the International Baccalaureate syllabus. Why? You have had these students for the past two years and know the syllabus of the course. This required component should have been part of the planning of the course

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[38] *Id.* at 401.

[39] *Id.* at 402.

[40] *Id.* at 403.

throughout. Although these students are not IB diploma candidates, the paper should have been drafted, revised, reviewed and polished throughout the course of the past two years. As you admitted, you did not know until the day the papers were due that these students were not submitting a paper.

With regards to your lesson planning, there is still a marked absence of writing activities in all your classes. x x x

Vangie, I hear that you feel you are doing a good job. What worries me, then, is your perception of how problematic this situation is. You are now one year into a Professional Growth Plan with incremental movement in just one of several areas of concern. I am disappointed that you believe that I do not want to have you continue as a member of our faculty. I have worked with you for the past twelve months on this growth plan, meeting with you no fewer [than] fifteen times since August 1996. Throughout this time, I have offered observations on the areas of deficiency and suggestions for ways to improve. Ms. Butt and Mr. Hammett have also been supportive of your stated desire to improve. We want you to be a successful teacher in the area you teach for the sake of our students. If, as you have confided, Filipino is not the language you would choose to teach, what are the options? Mr. Hammett said again for the record that he did try to schedule a section of Spanish this year, but was unable to do so. That situation may also exist next year as we already have four other teachers teaching Spanish. Knowing all this, it may be difficult to consider your placement next year.

I look forward to continued discussions with you, Vangie, as we search for ways to assist your improvement toward success as a teacher. I think we all realize, however, that we are running out of time.

On April 2, 1997, Jeffrey Hammett sent a memo[41] to Santos, likewise expressing his disappointment with the latter's performance. Hammett stated:

Vangie, we have been focusing on your planning for just over one year now, and this is just the first of four areas we wanted to address in your growth plan of last March. We have met with you more than thirty times this past year to check-on, discuss, and help improve

[41] *Id.* at 207.

your planning processes. Your planning has become our number one concern. **Still, as I look at the three-day plan you presented me today for this pre-IB Filipino 3 class (see attached) – note that this "plan" covers last Monday (31 March), today (2 April), and this coming Friday (4 April) - this one-page planning sheet is less than half complete. In fact, the "objectives" section contains nothing more than an unfinished sentence. You list no activities, no student outcomes. What's more, I found nothing but blank pages for any future class sessions**.

In all honesty, Vangie, this illustrates to me even more explicitly than ever before how justified we are in focusing our concerns on your planning. You cannot keep the daily objectives, activities, and expected student outcomes only "in your head" and "wing it" as you did today. Frankly speaking, you know how concerned we are with your planning, and you also know that you and I have had informal conversations relative to your continued employment with us. I would have hoped and expected, therefore, to see the complete plans for this quarter in your folder, or at the very least, a thoroughly planned unit on *Noli Me Tangere*, the material being presented and covered this week. Your "plan" shows me very little, and what I do see is completely unacceptable!

For me, the reality of this unacceptable lesson plan only reinforces the concerns being expressed by Mr. Loy. You do not plan in any written and complete way for the success of your students, and this lack of planning is now, has been, and always will be unacceptable in our school and in our profession. (Emphasis ours.)

Subsequently, on April 10, 1997, McCauley sent a letter[42] to Santos directing her to explain in writing why her employment from the School should not be terminated because of her failure to meet the criteria for improvement set out in her Professional Growth Plan and her substandard performance as a teacher.

In her reply letter[43] dated April 14, 1997, Santos blamed the School for her predicament. She said that, in the last few years, she had been forced to teach Filipino, a subject which she had no preparation for. The School allegedly made this happen against her objections and despite the fact that she had

[42] *Id.* at 208-209.

[43] *Id.* at 210.

no training in Filipino linguistics and literature. Santos also asked for clarification on why she was being asked to explain and the reasons therefor.

On April 21, 1997, McCauley wrote a letter[44] to Santos informing her that the School considered her letter dated April 14, 1997 as her explanation. The School also set a formal administrative investigation on April 23, 1997 in order to further clarify matters and accord Santos the opportunity to explain her side. Santos was given the choice of bringing a representative or counsel to assist her.

According to the Minutes of the Administrative Investigation[45] conducted on April 23, 1997, Santos was accompanied by Raquel David Ching, the President of the ISAE. Ching first sought clarification as regards the specific charge against Santos. McCauley referred to the letter dated April 10, 1997, which asked Santos to explain why her employment should not be terminated by reason of her performance that fell below the acceptable standards of the School. The charge against Santos was gross inefficiency or negligence in the performance of her assigned work. After the parties made known their positions, the investigating committee informed Santos and Ching that they would consider the views presented and they would advise Santos of the School's action on her case.

In a letter[46] dated May 29, 1997, McCauley informed Santos that he was adopting the recommendation of the investigation committee that Santos's employment from the School cannot be continued. According to McCauley, the committee found that the numerous consultations of Santos with her supervisors for the last three school years did not result in any appreciable improvement on her part. McCauley pointed out that Santos categorically indicated that she preferred to continue teaching Filipino for the school years 1994-1995 and 1995-1996. Given that Santos was duly licensed to teach Filipino, McCauley stated

[44] *Id.* at 211.

[45] *Id.* at 212.

[46] *Id.* at 213.

that the committee could not accept her claim that she was ill-equipped to teach the language. McCauley then told Santos that her employment with the School would cease effective June 7, 1997.

On June 26, 1997, the ISAE filed a complaint[47] against the petitioners, alleging the following causes of action: (1) unfair labor practice; (2) illegal dismissal; (3) moral and exemplary damages; (4) violation and refusal to comply with grievance procedures in the CBA; and (5) unresolved grievance matter. The reliefs prayed for included reinstatement and the payment of backwages and damages. The complaint was docketed as NLRC-NCR Case No. 00-06-04491-97. The complaint was subsequently amended[48] to include as complainants Evangeline Santos, Joselyn Rucio and Methelyn Filler.[49]

The Ruling of the Labor Arbiter

On April 3, 2001, the Labor Arbiter rendered a Decision[50] finding, among others, that Santos was illegally terminated from her employment. The relevant portions of the ruling state that:

> The law is clear that for an employee to be validly dismissed, it must be shown that the inefficiency or incompetency of the employee must be "gross or serious" and "habitual." What is gathered from the submission made by the respondent is the fact that complainant Santos does not have the skill and competency to teach Filipino as she was observed by her superior and peers to be lacking in "preparation" of her lesson plan; she was not in control of her classes as observed since students come in late; and, she has not communicated well with her students what the expectations and objectives of the class were.
>
> **Based on the above arguments, it is this Office's finding, that if she was measured against them, the complainant could not be**

[47] NLRC Records, Volume I.

[48] *Id.*

[49] In the Position Paper of the complainants before the Labor Arbiter, Evangeline Santos, Joselyn Rucio and Methelyn Filler invoked separate causes of action against the School. (CA *rollo*, pp. 149-162.)

[50] *Rollo*, pp. 89-127; penned by Labor Arbiter Patricio P. Libo-on.

considered as grossly or seriously inefficient or incompetent and therefore her dismissal is unwarranted. It is unwarranted since her being caught once for not preparing her lesson plan for the day is not and could not be, by itself as "gross or serious" as defined by law. Likewise, the observations made by her superior and peers could not be the basis for concluding or finding that she is grossly incompetent or inefficient.

The attendance of students to a greater extent is outside the control of the teacher. To hold her grossly incompetent on account of the late coming of students under her class is erroneous application of the intent of the law.

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This Office observed first hand (sic) the strained relations that developed and at times consumed the parties, making reinstatement a not prudent disposition of the case, for it will only inflame so far the subdued and subsiding emotions.

This Office was witness to the long and emotional and loud arguments that transpire every hearing. This Office had to step in most of the times to control flying tempers and emotions. Thus, in lieu of reinstatement, the respondent is directed to pay complainant separation pay equivalent to one-half (1/2) month salary for every year of service.

Full backwages will not be awarded as well considering the fact that complainant is not without fault. Partly, she contributed to the problem she found herself in only that, it is not "serious" or "gross" to make a finding of legality of her termination. She is, therefore, awarded a limited backwages not to exceed a year and a half in backwages as a form of penalty.

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WHEREFORE, judgment is hereby rendered as follows:

1. The complaint for unfair labor practice is dismissed for lack of merit;

2. The complaint of Rucio is dismissed for lack of merit;

3. The dismissal of Santos is declared unwarranted, and in view thereof, she is ordered paid separation pay in lieu of reinstatement in the amount of Seven Hundred Fifty[-]Six Thousand Five Hundred Thirty[-]Six and 55/100 (₱756,536.55) Pesos, and, she is likewise ordered

[paid] a limited backwages equivalent to one and a half (1 ½) year in the amount of One Million One Hundred Fifty[-]Two Thousand Eight Hundred Seventeen and 60/100 (₱1,152,817.60) Pesos (please see computation Annex "A");

4. Ms. Filler is declared a regular employee. She is ordered paid backwages and benefits due a regular employee covering the period from July 25, 1994 to the time of the rendition of this decision in the total amount of One Million Thirty[-]Three Thousand Three Hundred Seventy Five and 80/100 (₱1,033,375.80) Pesos (please see computation Annex "A").

All other claims are denied for lack of merit.[51] (Emphasis ours.)

Both parties appealed the Labor Arbiter's Decision to the National Labor Relations Commission (NLRC).[52] The appeals were docketed as NLRC CA No. 028558-01.

The Judgment of the NLRC

On February 28, 2003, the NLRC issued a Resolution,[53] which affirmed the decision of the Labor Arbiter in this wise:

WHEREFORE, premises considered, the appeal is dismissed for lack of merit and the Decision appealed from is affirmed *en toto*.

The NLRC upheld the ruling of the Labor Arbiter that Santos's dismissal from employment was not warranted given that "her being caught once for not preparing her lesson plan for the day is not and could not be, by itself, as gross or serious as defined by law. Likewise, the observations made by her superior and peers could not be the basis for concluding or finding that she is grossly incompetent or inefficient."[54] The NLRC found the conclusion of the Labor Arbiter to be supported by substantial evidence.

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[51] *Id.* at 119-126.

[52] CA *rollo*, pp. 321-346, 483-493.

[53] *Rollo*, pp. 128-148; penned by Commissioner Victoriano R. Calaycay with Commissioner Angelita A. Gacutan, concurring.

[54] *Id.* at 146.

Petitioners moved for a reconsideration[55] of the NLRC Resolution but the same was denied in a Resolution[56] dated June 30, 2003. Petitioners then filed a petition for *certiorari*[57] before the Court of Appeals.

The Decision of the Court of Appeals

On November 17, 2004, the Court of Appeals promulgated the assailed decision the decretal portion of which provides:

> **UPON THE VIEW WE TAKE OF THIS CASE**, **THUS**, the instant petition is **PARTLY GRANTED**. The Resolution of public respondent National Labor Relations Commission dated February 28, 2003, in NLRC CA No. 028558-01, and its Resolution of June 30, 2003 on the partial motion for reconsideration are **AFFIRMED** subject to the **MODIFICATION** that the award to private respondent METH[E]LYN FILLER of backwages and benefits due a regular employee from July 25, 1994 until the rendition of the Labor Arbiter's decision on April 3, 2001 is hereby **DELETED**. Without costs.[58]

Brushing aside the argument that Santos did not exercise slight care or diligence in the performance of her duties, the Court of Appeals pointed out that Santos did exert efforts to improve her performance, which led to a revision of her original Professional Growth Plan. Echoing the findings of the Labor Arbiter and the NLRC, the Court of Appeals agreed that Santos could not be said to be habitually neglectful of her duties after she was "caught once with an inadequately prepared lesson plan in 1997."[59] Although the Court of Appeals acknowledged that Santos's performance as a teacher was not at all satisfactory, it ruled that the same did not warrant the penalty of dismissal. To the appellate court, a penalty of suspension from work was more equitable under the circumstances. As a matter of right, Santos was adjudged to be entitled to reinstatement and

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[55] CA *rollo*, pp. 608-624.

[56] *Rollo*, pp. 149-150.

[57] CA *rollo*, pp. 2-43.

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

[59] *Id.* at 60.

backwages. However, given the deep antagonism between her and the petitioners, the Court of Appeals ordered the award of separation pay in lieu of reinstatement.

Both parties filed their respective motions for reconsideration[60] of the above decision of the Court of Appeals, but the same were denied in the assailed Resolution dated February 23, 2005.

The Petitioners' Arguments

In challenging the assailed decision of the appellate court, petitioners raise for our consideration the following issues:

a) WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT RESPONDENT EVANGELINE SANTOS WAS ILLEGALLY DISMISSED; and

b) WHETHER OR NOT RESPONDENT EVANGELINE SANTOS IS ENTITLED TO REINSTATEMENT OR SEPARATION PAY WITH BACKWAGES.[61]

Petitioners argue that Santos's repeated failure to maintain the standards of quality teaching expected from every faculty member of the School illustrates her gross and habitual neglect of her duties, which is a just cause for dismissal under Article 282 of the Labor Code. Petitioners lament the fact that the Court of Appeals allegedly substituted its own judgment with the reasonable standards of teaching set by the School. Petitioners point out that there was neither a finding that such standards were arbitrary, nor was the evaluation process biased or that the School or any of its personnel was motivated by ill will against Santos. Petitioners stress that Santos was not dismissed solely on the ground that she failed to prepare her lesson plan for **one particular day**. On the contrary, petitioners assert that Santos was dismissed from employment because she repeatedly failed to meet the standards required by the school from 1993 to 1997. According to petitioners, this repeated failure, especially after the one-year remediation period wherein

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[60] CA *rollo,* pp. 806-812, 813-832.

[61] *Rollo,* pp. 439-440.

school administrators met with Santos no less than thirty (30) times to check on her, clarify and discuss her planning process, and help her improve her performance, was clearly overlooked by the Court of Appeals.

Despite the application of the Professional Growth Plan, petitioners insist that Santos was still repeatedly found to be lacking in preparation and planning. Petitioners claim that Santos's failure to improve, most especially in the planning area of her teaching, justified the School's decision to terminate her services. Otherwise, to retain her in the roster of faculty would be tantamount to sacrificing the welfare of the School's very own students. At the very least, petitioners aver that Santos was guilty of gross inefficiency in the performance of her teaching duties. Petitioners further state that the School observed procedural due process before dismissing Santos. Since her employment was lawfully terminated, petitioners posit that an award of separation pay with backwages is not proper.

The Respondents' Arguments

Respondents argue that the Court cannot examine anymore the factual findings of an administrative tribunal, such as the Labor Arbiter, which has already gained expertise in its field. This holds truer if the factual findings had been affirmed upon review by the NLRC and the Court of Appeals. According to the respondents, it cannot be said that Santos did not exercise slight care or diligence in the performance of her duties as she did exert efforts to make the necessary adjustments. That Santos was shown to have inadequately prepared a lesson plan in 1997 did not necessarily show that she was habitually neglectful of her duties. For the said reasons, respondents also rejected the charge of gross inefficiency. Respondents aver that the administrative superiors of Santos found that she had greatly improved on her preparations and she was never found wanting in the other areas of her teaching. Respondents also stress that petitioners only brought up the claim of gross inefficiency in the petition for *certiorari* before the Court of Appeals. Although respondents admit that Santos did indeed perform her duties unsatisfactorily, they argue that the same does not

warrant dismissal. Considering that she had worked with the School for 17 long years with no known previous bad record, they allege that the ends of social and compassionate justice would be better served if she was merely suspended from work rather than terminated.

The Judgment of the Court

The Court finds the appeal meritorious.

Generally, on appeal, the findings of fact of an administrative agency like the NLRC are accorded not only respect but also finality if the findings are supported by substantial evidence. Such rule, however, is by no means absolute. As held in *San Miguel Corporation v. Aballa*,[62] "when the findings of fact of the labor arbiter and the NLRC are not supported by substantial evidence or their judgment was based on a misapprehension of facts, the appellate court may make an independent evaluation of the facts of the case." The Court finds the said exceptions extant in this case.

In *Janssen Pharmaceutica v. Silayro*,[63] we stated that "[t]o constitute a valid dismissal from employment, two requisites must concur: (1) the dismissal must be for any of the causes provided in Article 282 of the Labor Code; and, (2) the employee must be given an opportunity to be heard and to defend himself."

In the collective bargaining agreement (CBA) between the School and ISAE for the years 1992-1995, Section 13 of Appendix A thereof expressly states that "[t]ermination of employment shall be in accordance with the laws of the Philippines as presented in the LABOR CODE (Book VI, Art. 282)."[64]

Article 282[65] of the Labor Code provides:

[62] 500 Phil. 170, 194 (2005).

[63] 570 Phil. 215, 226 (2008).

[64] NLRC Records, Vol. I; CBA, p. 38.

[65] Now renumbered as Article 296 pursuant to Republic Act No. 10151 (An Act Allowing the Employment of Night Workers, thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, As Amended, Otherwise known as the Labor Code of the Philippines).

ART. 282. *Termination by employer*. – An employer may terminate an employment for any of the following causes:

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

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

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

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

(e) Other causes analogous to the foregoing.

In all cases involving termination of employment, the burden of proving the existence of the above just causes rests upon the employer.[66] The quantum of proof required in these cases is substantial evidence, that is, such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[67]

The Court had occasion to explain in *Century Iron Works, Inc. v. Bañas*[68] the concept of gross and habitual neglect of duties. Thus:

Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. **It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business**. Habitual neglect, on the other hand, implies repeated failure to perform one's duties for a period

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[66] *Lopez v. National Labor Relations Commission*, 358 Phil. 141, 150 (1998).

[67] *Functional, Inc. v. Granfil*, G.R. No. 176377, November 16, 2011, 660 SCRA 279, 285.

[68] G.R. No. 184116, June 19, 2013.

of time, depending upon the circumstances. (Citations omitted, emphasis supplied.)

We also reiterated in *Union Motor Corporation v. National Labor Relations Commission*[69] that in dismissing an employee for gross and habitual neglect of duties, the negligence should not merely be gross, it should also be habitual.

On gross inefficiency, we ruled in *Lim v. National Labor Relations Commission*[70] that:

> [G]ross inefficiency falls within the purview of "other causes analogous to the foregoing," and constitutes, therefore, just cause to terminate an employee under Article 282 of the Labor Code. One is analogous to another if it is susceptible of comparison with the latter either in general or in some specific detail; or has a close relationship with the latter. **"Gross inefficiency" is closely related to "gross neglect,"** for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business. In *Buiser vs. Leogardo*, this Court ruled that **failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal**. (Emphases ours; citations omitted.)

Viewed in light of the above doctrines, the Court is not convinced that the actuations of Santos complained of by the petitioners constituted gross and habitual neglect of her duties.

From the very beginning of her tenure as a teacher of the Filipino language, the recurring problem observed of Santos was that her lesson plans lacked details and coherent correlation to each other, to the course, and to the curriculum, which in turn affected how lessons and instructions were conveyed to the students.[71] After Santos was placed in a Professional Growth Plan on March 29, 1996, petitioners observed a noticeable improvement on her part. In his memo[72] dated May 24, 1996,

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[69] 487 Phil. 197, 209 (2004).

[70] 328 Phil. 843, 858 (1996).

[71] *Rollo*, pp. 230, 199, 232, 236, 375-376, 377, 382.

[72] *Id.* at 390.

then Assistant Principal Loy even stated that Santos's improvement was a result of her positive attitude in approaching her growth plan. Unfortunately, though, Santos could not sustain this progress. Not long after, the School administrators were again admonishing Santos for her vague lesson plans that lacked specifics.

What can be gathered from a thorough review of the records of this case is that the inadequacies of Santos as a teacher did not stem from a reckless disregard of the welfare of her students or of the issues raised by the School regarding her teaching. Far from being tainted with bad faith, Santos's failings appeared to have resulted from her lack of necessary skills, in-depth knowledge, and expertise to teach the Filipino language at the standards required of her by the School.

Be that as it may, we find that the petitioners had sufficiently proved the charge of gross inefficiency, which warranted the dismissal of Santos from the School.

The Court enunciated in *Peña v. National Labor Relations Commission*[73] that "it is the prerogative of the school to set high standards of efficiency for its teachers since quality education is a mandate of the Constitution. As long as the standards fixed are reasonable and not arbitrary, courts are not at liberty to set them aside." Moreover, the prerogative of a school to provide standards for its teachers and to determine whether these standards have been met is in accordance with academic freedom, which gives the educational institution the right to choose who should teach.[74]

The CBA between ISAE and the School for the years 1992-1995 also recognized the exclusive right of the School to "hire and appoint qualified faculty subject to such reasonable rules and regulations as it may prescribe,"[75] as well as the right of

[73] 327 Phil. 673, 676 (1996).

[74] *Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA 218, 236.

[75] Section 1, Article III of the CBA states:

SECTION 1. The SCHOOL has the exclusive right to hire and appoint

the School to discipline its faculty and determine reasonable levels of performance.[76] Section 8 of Appendix A[77] of the CBA also states that "[a]ll faculty members must meet the high standard of performance expected by the SCHOOL and abide by all its policies, procedures and contractual terms."

Contrary to the ruling of the Labor Arbiter, it is not accurate to state that Santos was dismissed by the School for inefficiency on account of the fact that she was caught only once without a lesson plan. The documentary evidence submitted by petitioners, the contents of which we laid down in detail in our statement of facts, pointed to the numerous instances when Santos failed to observe the prescribed standards of performance set by the School in several areas of concern, not the least of which was her lack of adequate planning for her Filipino classes. Said evidence established that the School administrators informed Santos of her inadequacies as soon as they became apparent; that they provided constructive criticism of her planning process and teaching performance; and that regular conferences were held between Santos and the administrators in order to address the latter's concerns. In view of her slow progress, the School required her to undergo the remediation phase of the evaluation process through a Professional Growth Plan. Despite the efforts of the School administrators, Santos failed to show any substantial

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qualified faculty subject to such reasonable rules and regulations as it may prescribe. (NLRC Records, Vol. I; CBA, p. 6.)

[76] Section 2, Article III of the CBA provides:

SECTION 2. Except as otherwise provided in this Agreement the [ISAE] recognizes the right of the SCHOOL to supervise, manage, and conduct the effective administration of the SCHOOL, including but not limited to, the direction of the teaching force, the hiring, re-hiring, assignment, transfer, promotion, laying-off, recalling, suspension, discharge and disciplining its faculty; the determination and use of testing, selection and placement procedures, the establishment and revision of reasonable SCHOOL rules, regulations and a CODE OF ETHICS attached hereto as Appendix B; the activities to be conducted in the SCHOOL, the determination of the required jobs within the SCHOOL, and the determination of reasonable levels of performance. (*Id.*)

[77] NLRC Records, Vol. I; CBA, pp. 33-36.

improvement in her planning process. Having failed to exit the remediation process successfully, the School was left with no choice but to terminate her employment.

The Court finds that, not only did the petitioners' documentary evidence sufficiently prove Santos's inefficient performance of duties, but the same also remained unrebutted by respondents' own evidence. On the contrary, Santos admits in her pleadings that her performance as a teacher of Filipino had not been satisfactory but she prays for leniency on account of her prior good record as a Spanish teacher at the School. Indeed, even the Labor Arbiter, the NLRC and the Court of Appeals agreed that Santos was not without fault but the lower tribunals deemed that termination was too harsh a penalty.

Nonetheless, the Court finds that petitioners had satisfactorily discharged the burden of proving the existence of gross inefficiency on the part of Santos, warranting her separation from the school.

Anent the conclusion of the Labor Arbiter that "the observations made by [Santos's] superior and peers could not be the basis for concluding or finding that she is grossly incompetent or inefficient,"[78] the Court finds the same utterly baseless. Far from being random and unstructured exercises, said observations were borne out of the evaluation procedures set up by the School in order to assist the members of its faculty to improve their performance. In their petition before this Court, petitioners attached a copy of their Reply/Position Paper[79] before the Labor Arbiter. Annexed to said pleading is the School's Position Paper Regarding Professional Growth, Supervision and Evaluation of Faculty,[80] which expressly states that:

> It is the policy of the International School Manila to assist teachers in the improvement of classroom instruction at all levels in order to provide the highest quality educational program at ISM. To that

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[78] *Rollo*, p. 146.

[79] *Id.* at 151-189.

[80] *Id.* at 190-198.

end, procedures have been established which include 1) the promotion of on-going professional growth, 2) on-going supervision including regular monitoring, improvement of instructional practices and evaluation for continuing employment or tenure, and 3) evaluation (performance assessment, directed assistance, remediation and, if necessary, termination of employment).[81]

Included in the supervision and evaluation process are formal and informal observations of a faculty member's performance in his/her classes. Thus,

> 2.1 Formal observations will take several forms. Some will be total [sic] unannounced, with or without a pre-observation conference. Others will be scheduled in advance, possibly including a pre-observation conference, and with a post observation conference. One component of the formal observation will always be a written commentary by the supervisor or colleague making the observation.
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> x x x x x x x x x
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> 2.3 Drop-in, informal observations, will be a part of the supervision and evaluation process. Drop-ins may be of any length, from a few minutes to an hour or more. A note from the observer confirming his or her impressions will be helpful to the teacher observed.[82]

From the foregoing, it is clear that the Labor Arbiter erred in not giving weight to the observations made by Santos's superiors and peers in determining whether she was grossly inefficient or not.

In view of the acts and omissions of Santos that constituted gross inefficiency, the Court finds that the School was justified in not keeping her in its employ. At this point, the Court needs to stress that Santos voluntarily agreed to teach the Filipino classes given to her when she came back from her leave of absence. Said classes were not forced upon her by the School. This much she admitted in the hearing of the case before the Labor Arbiter. She stated therein that for the school year 1993-1994, she was given the option to teach only one Spanish

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[81] *Id.* at 190.

[82] *Id.* at 197.

class and not have any Filipino teaching loads. She, however, said that if she took that option she would have been underpaid and her salary would not have been the same.[83] Moreover, for the school years 1994-1995 and 1995-1996, she made known to the School that she did not prefer a change in teaching assignment. Thus, when she consented to take on the Filipino classes, it was Santos's responsibility to teach them well within the standards of teaching required by the School, as she had done previously as a teacher of Spanish. Failing in this, she must answer for the consequences.

As held in *Agabon v. National Labor Relations Commission:*[84]

> The law imposes many obligations on the employer such as providing just compensation to workers, observance of the procedural requirements of notice and hearing in the termination of employment. On the other hand, the law also recognizes the right of the employer to expect from its workers not only good performance, adequate work and diligence, but also good conduct and loyalty. The employer may not be compelled to continue to employ such persons whose continuance in the service will patently be inimical to his interests. (citations omitted.)

As regards the requirements of procedural due process, Section 2(d) of Rule 1 of The Implementing Rules of Book VI states that:

> For termination of employment based on just causes as defined in Article 282 of the Labor Code:
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> (i) A written notice served on the employee specifying the ground or grounds for termination, and **giving said employee reasonable opportunity within which to explain his side**.
>
> (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given **opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him**.

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[83] NLRC Records, Vol. II; TSN, June 18, 1998, pp. 129-131.

[84] 485 Phil. 248, 279 (2004).

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

In this case, the School complied with the above requirements. After a thorough evaluation of Santos's performance, the School held a series of conferences and meetings with Santos, in order to improve her performance. On March 29, 1996, the School required Santos to undertake a Professional Growth Plan. Thereafter, when the intervention of the School failed to yield any considerable improvement on Santos, McCauley wrote her a letter on April 10, 1997, which required her to explain in writing within forty-eight (48) hours why her employment should not be terminated in view of her failure to meet the standards of the School on very specific areas of concern. On April 16, 1997, Santos responded to McCauley's letter, asking why she was being required to explain. On April 21, 1997, McCauley wrote Santos a letter informing her that an administrative investigation would be conducted on April 23, 1997 where she would be given the opportunity to be heard. On April 23, 1997, an administrative investigation was conducted. Santos appeared therein with the assistance of ISAE President Ching. In a letter dated May 29, 1997, the School informed Santos of its decision to terminate her employment on the ground of her failure to meet the standards of the School, which as discussed was tantamount to gross inefficiency.

In view of the finding that Santos was validly dismissed from employment, she would not ordinarily be entitled to separation pay.[85] An exception to this rule is when the court finds justification

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[85] Section 7, Rule I of the Implementing Rules of Book VI of the Labor Code provides:

SEC. 7. *Termination of employment by employer.* — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

in applying the principle of social justice according to the equities of the case. The Court explained in *Philippine Long Distance Telephone Co. (PLDT) v. National Labor Relations Commission*[86] that:

> We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.
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> xxx x x x xxx
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> The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.

In *Toyota Motor Phils. Corp. Workers Association v. National Labor Relations Commission*,[87] we modified our ruling in *PLDT* in this wise:

> In all of the foregoing situations, the Court declined to grant termination pay because the causes for dismissal recognized under Art. 282 of the Labor Code were serious or grave in nature and attended by willful or wrongful intent or they reflected adversely on the moral character of the employees. We therefore find that in

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[86] 247 Phil. 641, 649-650 (1988).

[87] 562 Phil. 759, 812 (2007).

addition to serious misconduct, in dismissals based on other grounds under Art. 282 like willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, and commission of a crime against the employer or his family, separation pay should not be conceded to the dismissed employee.

In analogous causes for termination like inefficiency, drug use, and others, the NLRC or the courts may opt to grant separation pay anchored on social justice in consideration of the length of service of the employee, the amount involved, whether the act is the first offense, the performance of the employee and the like, using the guideposts enunciated in *PLDT* on the propriety of the award of separation pay. (Emphasis ours.)

In the instant case, the Court finds equitable and proper the award of separation pay in favor of Santos in view of the length of her service with the School prior to the events that led to the termination of her employment. To recall, Santos was first employed by the School in 1978 as a Spanish language teacher. During this time, the records of this case are silent as to the fact of any infraction that she committed and/or any other administrative case against her that was filed by the School. Thus, an award of separation pay equivalent to one-half (1/2) month pay for every year of service is awarded in favor of Santos on grounds of equity and social justice.[88]

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 79031 are hereby **REVERSED** and a new one is entered ordering the dismissal of the complaint of Evangeline Santos in NLRC-NCR Case No. 00-06-04491-97. Petitioner International School Manila is **ORDERED** to pay respondent Evangeline Santos separation pay equivalent to one-half (1/2) month pay for every year of service. No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[88] See *Philippine Airlines, Inc. v. National Labor Relations Commission*, G.R. No. 123294, October 20, 2010, 634 SCRA 18, 46.

SECOND DIVISION

[G.R. No. 170462. February 5, 2014]

RODOLFO GUEVARRA and JOEY GUEVARRA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; HOMICIDE; ELEMENTS OF FRUSTRATED HOMICIDE AND HOMICIDE, FULLY ESTABLISHED.— [W]e uphold the rulings of the RTC and the CA which found the elements of these crimes fully established during the trial. The crime of frustrated homicide is committed when: (1) an "accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code is present." On the other hand, the crime of homicide is committed when: (1) a person is killed; (2) the accused killed that person without any justifying circumstance; (3) the accused had the intention to kill, which is presumed; and (4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide. The petitioners' intent to kill was clearly established by the nature and number of wounds sustained by their victims. Evidence to prove intent to kill in crimes against persons may consist, among other things, of the means used by the malefactors; the conduct of the malefactors before, at the time of, or immediately after the killing of the victim; and the nature, location and number of wounds sustained by the victim. The CA aptly observed that the ten (10) hack/stab wounds David suffered and which eventually caused his death, and the thirteen (13) hack/stab wounds Erwin sustained, confirmed the prosecution's theory that the petitioners purposely and vigorously attacked David and Erwin. In fact, the petitioners admitted at the pre-trial that "the wounds inflicted on the victim Erwin Ordoñez would have caused his death were it not for immediate medical attendance."

2. ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE, ELEMENTS OF; UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM, ABSENT.— By invoking self-defense, the petitioners, in effect, admitted to the commission of the acts

for which they were charged, albeit under circumstances that, if proven, would have exculpated them. With this admission, the burden of proof shifted to the petitioners to show that the killing and frustrated killing of David and Erwin, respectively, were attended by the following circumstances: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the persons resorting to self-defense. Of all the burdens the petitioners carried, the most important of all is the element of unlawful aggression. Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. The element of unlawful aggression must be proven first in order for self-defense to be successfully pleaded. There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense. As the RTC and the CA did, we find the absence of the element of unlawful aggression on the part of the victims. As the prosecution fully established, Erwin and David were just passing by the petitioners' compound on the night of November 8, 2000 when David was suddenly attacked by Joey while Erwin was attacked by Rodolfo. The attack actually took place outside, not inside, the petitioners' compound, as evidenced by the way the petitioners' gate was destroyed. The manner by which the wooden gate post was broken coincided with Erwin's testimony that his brother David, who was then clinging onto the gate, was dragged into the petitioners' compound. These circumstances, coupled with the nature and number of wounds sustained by the victims, clearly show that the petitioners did not act in self-defense in killing David and wounding Erwin. The petitioners were, in fact, the real aggressors.

3. ID.; FRUSTRATED HOMICIDE AND HOMICIDE; CIVIL LIABILITY.— We affirm the penalties imposed upon the petitioners, as they are well within the ranges provided by law, but modify the damages awarded by the CA. In addition to the ₱50,000.00 civil indemnity and ₱50,000.00 moral damages awarded by the CA, we award ₱25,000.00 to each of the victims as temperate damages, in lieu of the actual damages they sustained by reason of the crimes. Article 2224 of the Civil Code states that temperate or moderate damages may be recovered

when the court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty. Also, we impose on all the monetary awards for damages interest at the legal rate of six percent (6%) per annum from date of finality of the decision until fully paid.

APPEARANCES OF COUNSEL

U.P. Office of Legal Aid for petitioners.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

We review in this petition for review on *certiorari*[1] the decision[2] dated October 24, 2005 of the Court of Appeals (*CA*) in CA-G.R. CR No. 28899. The CA affirmed, with modification on the amount of damages, the joint decision[3] dated April 16, 2004 of the Regional Trial Court (*RTC*), Branch 20, Cauayan City, Isabela, finding Rodolfo Guevarra and Joey Guevarra (*petitioners*) guilty beyond reasonable doubt of the crimes of frustrated homicide and homicide.

Factual Antecedents

Rodolfo and his son, Joey, were charged with the crimes of frustrated homicide and homicide under two Informations which read:

In Criminal Case No. Br. 20-1560 for Frustrated Homicide:

That on or about the 8th day of January, 2000, in the municipality of Alicia, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating

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[1] Under Rule 45 of the Rules of Court; *rollo,* pp. 22-39.

[2] Penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mariano C. del Castillo (now a Member of this Court); CA *rollo,* pp. 207-222.

[3] Penned by Judge Henedino P. Eduarte; *rollo,* pp. 58-68.

together and helping one another, with intent to kill and without any just motive, did then and there, willfully, unlawfully and feloniously, assault, attack, hack and stab for several times with a sharp pointed bolo one Erwin Ordoñez, who as a result thereof, suffered multiple hack and stab wounds on the different parts of his body, which injuries would ordinarily cause the death of the said Erwin Ordoñez, thus, performing all the acts of execution which should have produced the crime of homicide as a consequence, but nevertheless, did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to the said Erwin Ordoñez, which prevented his death.[4]

In Criminal Case No. Br. 20-1561 for Homicide:

That on or about the 8th day of January, 2000, in the municipality of Alicia, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and helping one another, with intent to kill and without any just motive, did then and there, willfully, unlawfully and feloniously, assault, attack, hack and stab for several times with a sharp pointed bolo one David Ordoñez, who as a result thereof, suffered multiple hack and stab wounds on the different parts of his body which directly caused his death.[5]

Although the informations stated that the crimes were committed on January 8, 2000, the true date of their commission is November 8, 2000, as confirmed by the CA through the records.[6] The parties failed to raise any objection to the discrepancy.[7]

On arraignment, the petitioners pleaded not guilty to both charges.[8] The cases were jointly tried with the conformity of the prosecution and the defense. At the pre-trial, the petitioners interposed self-defense, which prompted the RTC to conduct

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[4] *Id.* at 58.

[5] *Id.* at 59.

[6] *Id.* at 43.

[7] *Ibid.*

[8] *Ibid.*

a reverse trial of the case.[9] During the trial, the parties presented different versions of the events that transpired on November 8, 2000.

Version of the Defense

To prove the petitioners' claim of self-defense, the defense presented the testimonies of Rodolfo, Joey, and the petitioners' neighbor, Balbino Agustin.

Testimony of Rodolfo

Rodolfo, who was then fifty-five (55) years old, narrated that, at around 11:00 p.m., on November 8, 2000, brothers Erwin Ordoñez and David Ordoñez, together with their companion, Philip Vingua, forced their way into his compound and threw stones at his house and tricycle. Through the back door of his house, Rodolfo went down to the basement or "*silung*" and shouted at the three men to stop. David saw him, threatened to kill him, and struck him with a "*panabas*," hitting him on the palm of his left hand. Rodolfo responded by reaching for the bolo tucked in the "*solera*" of his house, and hacked and stabbed Erwin and David until the two brothers fell to the ground. Upon seeing Erwin and David lying on the ground, Rodolfo called on someone to bring the brothers to the hospital. He stayed in his house until the policemen arrived.

Testimony of Joey

Joey, who was then thirty-one (31) years old, narrated that, at around 11:00 p.m., on November 8, 2000, he was awakened by the sound of stones being thrown at their house in Bliss, Paddad, Alicia, Isabela. Through the window, he saw Erwin, David and Philip breaking into their gate, which was made of wood and interlink wire and located five (5) to six (6) meters away from their house. He then heard his father Rodolfo say to the three men, "*kung ano man ang problema bukas na natin pag-usapan[,]*"[10] and David retorted in their dialect,

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[9] *Id.* at 59.

[10] Translated into English as "If you have a problem with me, let us just discuss it tomorrow." (*Id.* at 43.)

"*Okininam nga lakay adda ka gayam dita, patayin taka[.]*"[11]

Testimony of Balbino

Balbino narrated that, from inside his house in Bliss, Paddad, Alicia, Isabela, at around 10:00 p.m., on November 8, 2000, he heard a person from the outside saying "*Sige banatan ninyo na[.]*" [12] He opened his door and saw David, Erwin and Philip throwing stones at the house of his neighbor Crisanto Briones. Briones got mad and scolded the three men, "Why are you hitting my house? Why don't you hit the house of your enemy, *mga tarantado kayo*!"[13] David, Erwin and Philip then aimed their stones at the petitioners' house. Balbino heard David calling out to Joey, "*Joey, kung tunay kang lalaki lumabas ka diyan sa kalsada at dito tayo magpatayan[,]*"[14] but no one came out of Rodolfo's house. The stoning lasted for about thirty (30) minutes.

Afterwards, Balbino saw David, Erwin and Philip destroy Rodolfo's gate and pull the gate towards the road. He heard David say to his companions, "*koberan ninyo ako at papasok kami[.]*"[15] David, Erwin and Philip entered the petitioners' compound and damaged Rodolfo's tricycle with stones and their "*panabas*." Also, he heard Rodolfo say to David in Filipino that they could just talk about their problems with him the following day. But David approached Rodolfo and hacked him with a "*panabas.*" Rodolfo parried the blow with the back of his hand, and David and Rodolfo struggled for the possession of the "*panabas*."

Balbino also saw Erwin hit Rodolfo on the face with a stone and Joey was hit on his right foot, causing Rodolfo and Joey

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[11] Translated into English as "Vulva of your mother, so there you are, old man. I am going to kill you." (*Id.* at 43-44.)

[12] Translated into English as "Go ahead, give him a beating." (*Id.* at 44.)

[13] CA *rollo*, p. 55.

[14] Translated into English as "Joey, if you are indeed a man, you come out to the street and fight me." (*Rollo*, p. 44.)

[15] Translated into English as "Provide us cover, as we will enter." (*Ibid.*)

to retreat to the "*silung*" of their house from where Rodolfo got "something shiny," and with it stabbed David and Erwin. He saw the two brothers fall to the ground.

Version of the Prosecution

As its rebuttal witness, the prosecution presented the sole testimony of Erwin who survived the hacking.

Erwin narrated that, at around 10:00 to 11:00 p.m., on November 8, 2000, he, his brother David and Philip went to a birthday party and passed in front of the petitioners' compound. He was walking twenty (20) meters ahead of his companions when, suddenly, Philip ran up to him saying that David was being stabbed by Joey with a bolo. While approaching the scene of the stabbing, which was three (3) meters away from where his brother David was, Erwin was met by Rodolfo who then hacked him, hitting his arm and back. Thereafter, Rodolfo and Joey dragged Erwin inside the petitioners' compound and kept on hacking him. He was hacked and stabbed thirteen (13) times. He became weak and ultimately fell to the ground.

Erwin denied that he and David threw stones at the petitioners' house and damaged Rodolfo's tricycle. They did not likewise destroy the petitioners' gate, which was only damaged when his brother David clung on to it while he was being pulled by Rodolfo and Erwin into their compound. While they were being hacked and stabbed by Rodolfo and Erwin, stones actually rained on them and people outside the petitioners' gate were saying, "Do not kill the brothers. Allow them to come out."[16]

After the incident, Erwin and David, both unconscious, were brought to the hospital. David died in the hospital while being treated for his wounds.

The RTC's Ruling

In a decision dated April 16, 2004, the RTC gave credence to the prosecution's version of the incident and found the petitioners guilty beyond reasonable doubt of the crimes of

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[16] *Id.* at 45.

frustrated homicide and homicide. It disbelieved the defense's version of the events due to material inconsistencies in the testimonies of the defense witnesses. It denied the petitioners' claim of self-defense for lack of clear, convincing and satisfactory supporting evidence.

The RTC explained in its decision that "[w]hen an accused invokes the justifying circumstance of self-defense, he loses the constitutional presumption of innocence and assumes the burden of proving, with clear and convincing evidence, the justification for his act";[17] that self-defense is an affirmative allegation which must be proven with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it.[18] The RTC held that the petitioners miserably failed to prove that there was unlawful aggression on the part of the victims, Erwin and David.

Accordingly, the RTC disposed of the case as follows:

WHEREFORE, finding the accused Rodolfo Guevarra and Joey Guevarra guilty beyond reasonable doubt of the crimes for which they are charged, and absent any mitigating or aggravating circumstance/s that attended the commission of the crimes, the Court hereby sentences each of the accused to suffer –

In Criminal Case No. Br. 20-1560 for Frustrated Homicide – an indeterminate penalty ranging from Three (3) years and one day of *prision correccional* as minimum to Nine (9) years of *prision mayor* as maximum and to indemnify the victim Erwin Ordoñez moral damages in the amount of Twenty Thousand (₱20,000.00) Pesos, without any subsidiary imprisonment in case of insolvency. Cost against the accused.

In Criminal Case No. Br. 20-1561 for Homicide – an indeterminate penalty ranging from Eight (8) years and one day of *prision mayor* as minimum to Fifteen (15) years of *Reclusion Temporal* as maximum and to indemnify the heirs of the deceased David Ordoñez Sixty Thousand (₱60,000.00) Pesos plus Thirty Thousand (₱30,000.00) Pesos

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[17] *Id.* at 62.

[18] *Id.* at 63.

as moral damages without subsidiary imprisonment in case of insolvency. Costs against the accused.

The bail bonds of the accused are CANCELLED.[19]

The CA's Ruling

On appeal, the CA affirmed the RTC's judgment and convicted the petitioners of the crimes charged. As the RTC did, the CA found that Erwin and David committed no unlawful aggression sufficient to provoke the actions of the petitioners; that "[a]ggression, to be unlawful, must be actual and imminent, such that there is a real threat of bodily harm to the person resorting to self-defense or to others whom that person is seeking to defend."[20] Even assuming the truth of the petitioners' claims that David challenged Joey to a fight and threatened to kill Rodolfo on the night of November 8, 2000, the CA held that these acts do not constitute unlawful aggression to justify the petitioners' actions as no real or actual danger existed as the petitioners were then inside the safety of their own home.

The CA further held that the petitioners' plea of self-defense was belied by the nature and number of wounds inflicted on Erwin, who sustained thirteen (13) stab wounds on his arm and back, and David, who suffered around ten (10) stab wounds on his back and stomach causing his death. These wounds logically indicated that the assault was no longer an act of self-defense but a determined homicidal aggression on the part of the petitioners.[21]

The CA, however, found error in the amounts of civil indemnity and moral damages awarded by the RTC. Thus, the CA modified the RTC's decision in this wise:

WHEREFORE, the appealed Decision is **AFFIRMED** with **MODIFICATION**. In Crim. Case No. Br. 20-1561, appellants RODOLFO GUEVARRA and JOEY GUEVARRA are each ordered to pay the heirs of the deceased David Ordonez the sum of Fifty Thousand Pesos

[19] *Id.* at 68; italics supplied.

[20] *Id.* at 48.

[21] *Id.* at 53.

(₱50,000.00) as civil indemnity and another Fifty Thousand Pesos (₱50,000.00) as moral damages.[22]

The Petition

In the present petition, the petitioners raise the following issues:

A.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN FAILING TO APPRECIATE THE PRESENCE OF THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE DESPITE CLEAR AND CONVINCING EVIDENCE SHOWING THE ELEMENTS OF SELF-DEFENSE.

B.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE LONE WITNESS OF THE PROSECUTION.

C.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT ACQUITTING PETITIONER JOEY GUEVARRA WHO HAS NO PARTICIPATION IN THE SAID INCIDENT.[23]

Our Ruling

We deny the present petition as we find no reversible error in the CA decision of October 24, 2005.

At the outset, we emphasize that the Court's review of the present case is *via* a petition for review under Rule 45, which generally bars any question pertaining to the factual issues raised. The well-settled rule is that questions of fact are not reviewable in petitions for review under Rule 45, subject only to certain exceptions, among them, the lack of sufficient support in evidence of the trial court's judgment or the appellate court's misapprehension of the adduced facts.[24]

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[22] CA *rollo*, p. 222; emphases supplied.

[23] *Rollo*, p. 27; emphasis ours.

[24] See *Gotis v. People*, 559 Phil. 843, 849 (2007).

The petitioners fail to convince us that we should review the findings of fact in this case. Factual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record.[25] We find that both the RTC and the CA fully considered the evidence presented by the prosecution and the defense, and they have adequately explained the legal and evidentiary reasons in concluding that the petitioners are guilty of the crimes of frustrated homicide and homicide.

In the absence of any showing that the trial and appellate courts overlooked certain facts and circumstances that could substantially affect the outcome of the present case, we uphold the rulings of the RTC and the CA which found the elements of these crimes fully established during the trial.

The crime of frustrated homicide is committed when: (1) an "accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code is present."[26]

On the other hand, the crime of homicide is committed when: (1) a person is killed; (2) the accused killed that person without any justifying circumstance; (3) the accused had the intention to kill, which is presumed; and (4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[27]

The petitioners' intent to kill was clearly established by the nature and number of wounds sustained by their victims. Evidence to prove intent to kill in crimes against persons may consist,

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[25] *Maxwell Heavy Equipment Corporation v. Yu*, G.R. No. 179395, December 15, 2010, 638 SCRA 653, 658.

[26] *Josue v. People*, G.R. No. 199579, December 10, 2012, 687 SCRA 675, 682.

[27] *SPO1 Nerpio v. People*, 555 Phil. 87, 94 (2007).

among other things, of the means used by the malefactors; the conduct of the malefactors before, at the time of, or immediately after the killing of the victim; and the nature, location and number of wounds sustained by the victim.[28] The CA aptly observed that the ten (10) hack/stab wounds David suffered and which eventually caused his death, and the thirteen (13) hack/stab wounds Erwin sustained, confirmed the prosecution's theory that the petitioners purposely and vigorously attacked David and Erwin.[29] In fact, the petitioners admitted at the pre-trial that "the wounds inflicted on the victim Erwin Ordoñez would have caused his death were it not for immediate medical attendance." [30]

By invoking self-defense, the petitioners, in effect, admitted to the commission of the acts for which they were charged, albeit under circumstances that, if proven, would have exculpated them. With this admission, the burden of proof shifted to the petitioners to show that the killing and frustrated killing of David and Erwin, respectively, were attended by the following circumstances: (1) unlawful aggression on the part of the victims; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the persons resorting to self-defense.[31]

Of all the burdens the petitioners carried, the most important of all is the element of unlawful aggression. Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person.[32] The element of unlawful aggression must be proven first in order for self-defense to be successfully pleaded. There can be no self-defense, whether

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[28] *People v. Lanuza*, G.R. No. 188562, August 24, 2011, 656 SCRA 293, 300.

[29] *Rollo*, p. 53.

[30] *Id.* at 59.

[31] *People v. Silvano*, 403 Phil. 598, 606 (2001); and *People v. Plazo*, 403 Phil. 347, 357 (2001).

[32] *People v. Basadre*, 405 Phil. 216, 229-230 (2001).

complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense.[33]

As the RTC and the CA did, we find the absence of the element of unlawful aggression on the part of the victims. As the prosecution fully established, Erwin and David were just passing by the petitioners' compound on the night of November 8, 2000 when David was suddenly attacked by Joey while Erwin was attacked by Rodolfo. The attack actually took place outside, not inside, the petitioners' compound, as evidenced by the way the petitioners' gate was destroyed. The manner by which the wooden gate post was broken coincided with Erwin's testimony that his brother David, who was then clinging onto the gate, was dragged into the petitioners' compound. These circumstances, coupled with the nature and number of wounds sustained by the victims, clearly show that the petitioners did not act in self-defense in killing David and wounding Erwin. The petitioners were, in fact, the real aggressors.

As to the penalties and damages awarded

We affirm the penalties imposed upon the petitioners, as they are well within the ranges provided by law, but modify the damages awarded by the CA.

In addition to the ₱50,000.00 civil indemnity and ₱50,000.00 moral damages awarded by the CA, we award ₱25,000.00 to each of the victims as temperate damages, in lieu of the actual damages they sustained by reason of the crimes. Article 2224 of the Civil Code states that temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty.

Also, we impose on all the monetary awards for damages interest at the legal rate of six percent (6%) per annum from date of finality of the decision until fully paid.[34]

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[33] *People v. Catbagan*, 467 Phil. 1044, 1075 (2004).

[34] *People v. Concillado*, G.R. No. 181204, November 28, 2011, 661 SCRA 363, 384.

WHEREFORE, the petition is **DENIED**. The decision dated October 24, 2005 of the Court of Appeals is hereby **AFFIRMED** with **MODIFICATION** in that the petitioners are also ordered to pay Erwin Ordoñez and the heirs of David Ordoñez the amount of ₱25,000.00 as temperate damages.

The petitioners shall pay interest at the rate of six percent (6%) per annum on the civil indemnity, moral and temperate damages from the finality of this decision until fully paid.

SO ORDERED.

*Carpio (Chairperson), Perez, Mendoza,** and *Perlas-Bernabe, JJ.*, concur.

SECOND DIVISION

[G.R. No. 185145. February 5, 2014]

SPOUSES VICENTE AFULUGENCIA and LETICIA AFULUGENCIA, *petitioners, vs.* **METROPOLITAN BANK & TRUST CO. and EMMANUEL L. ORTEGA, Clerk of Court, Regional Trial Court and Ex-Officio Sheriff, Province of Bulacan,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR SUBPOENA *DUCES TECUM AD TESTIFICANDUM*; FILING OF AN OPPOSITION THERETO CURES THE DEFECT OF LACK OF NOTICE OF HEARING.— On the procedural issue, it is quite clear that Metrobank was notified of the Motion for

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* In lieu of Associate Justice Mariano C. del Castillo per Raffle dated February 5, 2014.

Issuance of Subpoena *Duces Tecum Ad Testificandum*; in fact, it filed a timely Opposition thereto. The technical defect of lack of notice of hearing was thus cured by the filing of the Opposition.

2. ID.; ID.; INTERROGATORIES TO PARTIES; SERVICE OF WRITTEN INTERROGATORIES IS REQUIRED BEFORE AN ADVERSE PARTY MAY BE COMPELLED TO TESTIFY IN COURT; REASONS.— As a rule, in civil cases, the procedure of calling the adverse party to the witness stand is not allowed, unless written interrogatories are first served upon the latter. x x x One of the purposes of the above rule is to prevent fishing expeditions and needless delays; it is there to maintain order and facilitate the conduct of trial. It will be presumed that a party who does not serve written interrogatories on the adverse party beforehand will most likely be unable to elicit facts useful to its case if it later opts to call the adverse party to the witness stand as its witness. Instead, the process could be treated as a fishing expedition or an attempt at delaying the proceedings; it produces no significant result that a prior written interrogatories might bring. Besides, since the calling party is deemed bound by the adverse party's testimony, compelling the adverse party to take the witness stand may result in the calling party damaging its own case. Otherwise stated, if a party cannot elicit facts or information useful to its case through the facility of written interrogatories or other mode of discovery, then the calling of the adverse party to the witness stand could only serve to weaken its own case as a result of the calling party's being bound by the adverse party's testimony, which may only be worthless and instead detrimental to the calling party's cause. Another reason for the rule is that by requiring prior written interrogatories, the court may limit the inquiry to what is relevant, and thus prevent the calling party from straying or harassing the adverse party when it takes the latter to the stand. Thus, the rule not only protects the adverse party from unwarranted surprises or harassment; it likewise prevents the calling party from conducting a fishing expedition or bungling its own case. Using its own judgment and discretion, the court can hold its own in resolving a dispute, and need not bear witness to the parties perpetrating unfair court practices such as fishing for evidence, badgering, or altogether ruining their own cases. Ultimately, such unnecessary

processes can only constitute a waste of the court's precious time, if not pointless entertainment.

3. ID.; ID.; ID.; THE RULE THAT A PARTY, FOR GOOD CAUSE SHOWN, MAY BE COMPELLED TO GIVE TESTIMONY IN COURT BY THE ADVERSE PARTY WHO HAS NOT SERVED WRITTEN INTERROGATORIES DOES NOT APPLY WHERE IT WOULD VIOLATE THE PRINCIPLES OF JUSTICE AND FAIR PLAY.— In the present case, petitioners seek to call Metrobank's officers to the witness stand as their initial and main witnesses, and to present documents in Metrobank's possession as part of their principal documentary evidence. This is improper. Petitioners may not be allowed, at the incipient phase of the presentation of their evidence-in-chief at that, to present Metrobank's officers – who are considered adverse parties as well, based on the principle that corporations act only through their officers and duly authorized agents – as their main witnesses; nor may they be allowed to gain access to Metrobank's documentary evidence for the purpose of making it their own. This is tantamount to building their whole case from the evidence of their opponent. The burden of proof and evidence falls on petitioners, not on Metrobank; if petitioners cannot prove their claim using their own evidence, then the adverse party Metrobank may not be pressured to hang itself from its own defense. It is true that under the Rules, a party may, for good cause shown and to prevent a failure of justice, be compelled to give testimony in court by the adverse party who has not served written interrogatories. But what petitioners seek goes against the very principles of justice and fair play; they would want that Metrobank provide the very evidence with which to prosecute and build their case from the start. This they may not be allowed to do.

APPEARANCES OF COUNSEL

Perez Calima Suratos Maynigo & Roque Law Offices for private respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Section 6,[1] Rule 25 of the Rules of Court (Rules) provides that "a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal." The provision seeks to prevent fishing expeditions and needless delays. Its goal is to maintain order and facilitate the conduct of trial.

Assailed in this Petition for Review on *Certiorari*[2] are the April 15, 2008 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 99535 which dismissed petitioners' Petition for *Certiorari* for lack of merit and its October 2, 2008 Resolution[4] denying petitioners' Motion for Reconsideration.[5]

Factual Antecedents

Petitioners, spouses Vicente and Leticia Afulugencia, filed a Complaint[6] for nullification of mortgage, foreclosure, auction sale, certificate of sale and other documents, with damages, against respondents Metropolitan Bank & Trust Co. (Metrobank) and Emmanuel L. Ortega (Ortega) before the Regional Trial Court (RTC) of Malolos City, where it was docketed as Civil Case No. 336-M-2004 and assigned to Branch 7.

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[1] Sec. 6. *Effect of failure to serve written interrogatories*. – Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal.

[2] *Rollo*, pp. 11-24.

[3] CA *rollo*, pp. 297-306; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Rodrigo V. Cosico and Mariflor P. Punzalan Castillo.

[4] *Id.* at 333; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr.

[5] *Id.* at 309-316.

[6] *Id.* at 17-23.

Metrobank is a domestic banking corporation existing under Philippine laws, while Ortega is the Clerk of Court and *Ex-Officio* Sheriff of the Malolos RTC.

After the filing of the parties' pleadings and with the conclusion of pre-trial, petitioners filed a Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum*[7] to require Metrobank's officers[8] to appear and testify as the petitioners' initial witnesses during the August 31, 2006 hearing for the presentation of their evidence-in-chief, and to bring the documents relative to their loan with Metrobank, as well as those covering the extrajudicial foreclosure and sale of petitioners' 200-square meter land in Meycauayan, Bulacan covered by Transfer Certificate of Title No. 20411 (M). The Motion contained a notice of hearing written as follows:

NOTICE

The Branch Clerk of Court
Regional Trial Court
Branch 7, Malolos, Bulacan

Greetings:

Please submit the foregoing motion for the consideration and approval of the Hon. Court immediately upon receipt hereof.

(signed)
Vicente C. Angeles[9]

Metrobank filed an Opposition[10] arguing that for lack of a proper notice of hearing, the Motion must be denied; that being a litigated motion, the failure of petitioners to set a date and time for the hearing renders the Motion ineffective and *pro forma*; that pursuant to Sections 1 and 6[11] of Rule 25 of the

[7] *Id.* at 74-75.

[8] Specifically, Oscar L. Abendan, Senior Manager; O.L. Cajucom, Assistant Manager; and B.C. T. Reyes, Assistant Manager.

[9] CA *rollo*, pp. 75-76.

[10] *Id.* at 77-82.

[11] Which provide, thus:

Rules, Metrobank's officers – who are considered adverse parties – may not be compelled to appear and testify in court for the petitioners since they were not initially served with written interrogatories; that petitioners have not shown the materiality and relevance of the documents sought to be produced in court; and that petitioners were merely fishing for evidence.

Petitioners submitted a Reply[12] to Metrobank's Opposition, stating that the lack of a proper notice of hearing was cured by the filing of Metrobank's Opposition; that applying the principle of liberality, the defect may be ignored; that leave of court is not necessary for the taking of Metrobank's officers' depositions; that for their case, the issuance of a subpoena is not unreasonable and oppressive, but instead favorable to Metrobank, since it will present the testimony of these officers just the same during the presentation of its own evidence; that the documents sought to be produced are relevant and will prove whether petitioners have paid their obligations to Metrobank in full, and will settle the issue relative to the validity or invalidity of the foreclosure proceedings; and that the Rules do not prohibit a party from presenting the adverse party as its own witness.

Ruling of the Regional Trial Court

RULE 25

INTERROGATORIES TO PARTIES

Section 1. Interrogatories to parties; service thereof.

Under the same conditions specified in Section 1 of Rule 23, any party desiring to elicit material and relevant facts from any adverse parties shall file and serve upon the latter written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf.

Sec. 6. Effect of failure to serve written interrogatories.

Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal.

[12] CA *rollo*, pp. 83-88.

On October 19, 2006, the trial court issued an Order[13] denying petitioners' Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum*, thus:

> The motion lacks merit.
>
> As pointed out by the defendant bank in its opposition, the motion under consideration is a mere scrap of paper by reason of its failure to comply with the requirements for a valid notice of hearing as specified in Sections 4 and 5 of Rule 15 of the Revised Rules of Court. Moreover, the defendant bank and its officers are adverse parties who cannot be summoned to testify unless written interrogatories are first served upon them, as provided in Sections 1 and 6, Rule 25 of the Revised Rules of Court.
>
> In view of the foregoing, and for lack of merit, the motion under consideration is hereby DENIED.
>
> SO ORDERED.[14]

Petitioners filed a Motion for Reconsideration[15] pleading for leniency in the application of the Rules and claiming that the defective notice was cured by the filing of Metrobank's Opposition, which they claim is tantamount to notice. They further argued that Metrobank's officers – who are the subject of the subpoena – are not party-defendants, and thus do not comprise the adverse party; they are individuals separate and distinct from Metrobank, the defendant corporation being sued in the case.

In an Opposition[16] to the Motion for Reconsideration, Metrobank insisted on the procedural defect of improper notice of hearing, arguing that the rule relative to motions and the requirement of a valid notice of hearing are mandatory and must be strictly observed. It added that the same rigid treatment must be accorded to Rule 25, in that none of its officers may

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[13] *Rollo*, pp. 17, 28, 54, 171-172.

[14] *Id.* at 54.

[15] CA *rollo*, pp. 217-222.

[16] *Id.* at 222-227.

be summoned to testify for petitioners unless written interrogatories are first served upon them. Finally, it said that since a corporation may act only through its officers and employees, they are to be considered as adverse parties in a case against the corporation itself.

In another Order[17] dated April 17, 2007, the trial court denied petitioners' Motion for Reconsideration. The trial court held, thus:

> Even if the motion is given consideration by relaxing Sections 4 and 5, Rule 15 of the Rules of Court, no such laxity could be accorded to Sections 1 and 6 of Rule 25 of the Revised Rules of Court which require prior service of written interrogatories to adverse parties before any material and relevant facts may be elicited from them more so if the party is a private corporation who could be represented by its officers as in this case. In other words, as the persons sought to be subpoenaed by the plaintiffs-movants are officers of the defendant bank, they are in effect the very persons who represent the interest of the latter and necessarily fall within the coverage of Sections 1 and 6, Rule 25 of the Revised Rules of Court.

In view of the foregoing, the motion for reconsideration is hereby denied.

SO ORDERED.[18]

Ruling of the Court of Appeals

Petitioners filed a Petition for *Certiorari*[19] with the CA asserting this time that their Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum* is not a litigated motion; it does not seek relief, but aims for the issuance of a mere process. For these reasons, the Motion need not be heard. They likewise insisted on liberality, and the disposition of the case on its merits

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[17] *Rollo*, pp. 184-185.

[18] *Id.* at 185.

[19] CA *rollo*, pp. 2-15.

and not on mere technicalities.[20] They added that Rule 21[21] of the Rules requires prior notice and hearing only with respect to the taking of depositions; since their Motion sought to require Metrobank's officers to appear and testify in court and not to obtain their depositions, the requirement of notice and hearing may be dispensed with. Finally, petitioners claimed that the Rules – particularly Section 10,[22] Rule 132 – do not prohibit a party from presenting the adverse party as its own witness.

On April 15, 2008, the CA issued the questioned Decision, which contained the following decretal portion:

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[20] Citing the cases of *Vlason Enterprises Corporation v. Court of Appeals*, 369 Phil. 269 (1999); *People v. Hon. Leviste*, 325 Phil. 525 (1996); *Adorio v. Hon. Bersamin*, 339 Phil. 411 (1997); and *E&L Mercantile, Inc. v. Intermediate Appellate Court*, 226 Phil. 299 (1986).

[21] Which provides as follows:

RULE 21
SUBPOENA

Section 1. Subpoena and subpoena *duces tecum*.

Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or the trial of an action, or at any investigation conducted by competent authority, or for the taking of his deposition. It may also require him to bring with him any books, documents, or other things under his control, in which case it is called a subpoena *duces tecum*.

x x x x x x x x x

Sec. 5. Subpoena for depositions.

Proof of service of a notice to take a deposition, as provided in sections 15 and 25 of Rule 23, shall constitute sufficient authorization for the issuance of subpoenas for the persons named in said notice by the clerk of the court of the place in which the deposition is to be taken. The clerk shall not, however, issue a subpoena *duces tecum* to any such person without an order of the court.

[22] Which states:

RULE 132
PRESENTATION OF EVIDENCE
A. EXAMINATION OF WITNESSES

x x x x x x x x x

Sec. 10. Leading and misleading questions. — A question which suggests to the witness the answer which the examining party desires is a leading question. It is not allowed, except:

WHEREFORE, the petition is DISMISSED for lack of merit. The assailed orders dated October 19, 2006 and April 17, 2007 in Civil Case No. 336-M-2004 issued by the RTC, Branch 7, Malolos City, Bulacan, are AFFIRMED. Costs against petitioners.

SO ORDERED.[23]

The CA held that the trial court did not commit grave abuse of discretion in issuing the assailed Orders; petitioners' Motion is a litigated motion, especially as it seeks to require the adverse party, Metrobank's officers, to appear and testify in court as petitioners' witnesses. It held that a proper notice of hearing, addressed to the parties and specifying the date and time of the hearing, was required, consistent with Sections 4 and 5,[24] Rule 15 of the Rules.

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x x x x x x x x x

(e) Of a witness who is an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party.

A misleading question is one which assumes as true a fact not yet testified to by the witness, or contrary to that which he has previously stated. It is not allowed.

[23] CA *rollo*, p. 305.

[24] Which state, as follows:

RULE 15

MOTIONS

x x x x x x x x x

Sec. 4. Hearing of motion.

Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Sec. 5. Notice of hearing.

The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

The CA held further that the trial court did not err in denying petitioners' Motion to secure a subpoena *duces tecum/ad testificandum*, ratiocinating that Rule 25 is quite clear in providing that the consequence of a party's failure to serve written interrogatories upon the opposing party is that the latter may not be compelled by the former to testify in court or to render a deposition pending appeal. By failing to serve written interrogatories upon Metrobank, petitioners foreclosed their right to present the bank's officers as their witnesses.

The CA declared that the justification for the rule laid down in Section 6 is that by failing to seize the opportunity to inquire upon the facts through means available under the Rules, petitioners should not be allowed to later on burden Metrobank with court hearings or other processes. Thus, it held:

> x x x Where a party unjustifiedly refuses to elicit facts material and relevant to his case by addressing written interrogatories to the adverse party to elicit those facts, the latter may not thereafter be compelled to testify thereon in court or give a deposition pending appeal. The justification for this is that the party in need of said facts having foregone the opportunity to inquire into the same from the other party through means available to him, he should not thereafter be permitted to unduly burden the latter with courtroom appearances or other cumbersome processes. The sanction adopted by the Rules is not one of compulsion in the sense that the party is being directly compelled to avail of the discovery mechanics, but one of negation by depriving him of evidentiary sources which would otherwise have been accessible to him.[25]

Petitioners filed their Motion for Reconsideration,[26] which the CA denied in its assailed October 2, 2008 Resolution. Hence, the present Petition.

Issues

Petitioners now raise the following issues for resolution:

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[25] CA *rollo*, p. 305, citing Regalado, *Remedial Law Compendium*, Volume I, Eighth Revised Ed., 2002, pp. 333-334.

[26] *Id.* at 309-316.

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERRORS IN REQUIRING NOTICE AND HEARING (SECS. 4 AND 5, RULE 15, RULES OF COURT) FOR A MERE MOTION FOR SUBPOENA OF RESPONDENT BANK'S OFFICERS WHEN SUCH REQUIREMENTS APPLY ONLY TO DEPOSITION UNDER SEC. 6, RULE 25, RULES OF COURT.

II

THE COURT OF APPEALS COMMITTED (REVERSIBLE) ERROR IN HOLDING THAT THE PETITIONERS MUST FIRST SERVE WRITTEN INTERROGATORIES TO RESPONDENT BANK'S OFFICERS BEFORE THEY CAN BE SUBPOENAED.[27]

Petitioners' Arguments

Praying that the assailed CA dispositions be set aside and that the Court allow the issuance of the subpoena *duces tecum/ ad testificandum*, petitioners assert that the questioned Motion is not a litigated motion, since it seeks not a relief, but the issuance of process. They insist that a motion which is subject to notice and hearing under Sections 4 and 5 of Rule 15 is an application for relief other than a pleading; since no relief is sought but just the process of subpoena, the hearing and notice requirements may be done away with. They cite the case of *Adorio v. Hon. Bersamin*,[28] which held that –

> Requests by a party for the issuance of subpoenas do not require notice to other parties to the action. No violation of due process results by such lack of notice since the other parties would have ample opportunity to examine the witnesses and documents subpoenaed once they are presented in court.[29]

Petitioners add that the Rules should have been liberally construed in their favor, and that Metrobank's filing of its Opposition be considered to have cured whatever defect the Motion suffered from.

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[27] *Rollo*, pp. 16, 20.

[28] *Supra* note 20.

[29] *Id.* at 419.

Petitioners likewise persist in the view that Metrobank's officers – the subject of the Motion – do not comprise the adverse party covered by the rule; they insist that these bank officers are mere employees of the bank who may be called to testify for them.

Respondents' Arguments

Metrobank essentially argues in its Comment[30] that the subject Motion for the issuance of a subpoena *duces tecum/ad testificandum* is a litigated motion, especially as it is directed toward its officers, whose testimony and documentary evidence would affect it as the adverse party in the civil case. Thus, the lack of a proper notice of hearing renders it useless and a mere scrap of paper. It adds that being its officers, the persons sought to be called to the stand are themselves adverse parties who may not be compelled to testify in the absence of prior written interrogatories; they are not ordinary witnesses whose presence in court may be required by petitioners at any time and for any reason.

Finally, Metrobank insists on the correctness of the CA Decision, adding that since petitioners failed up to this time to pay the witnesses' fees and kilometrage as required by the Rules,[31] the issuance of a subpoena should be denied.

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[30] *Rollo*, pp. 48-82.

[31] Citing the following Rule:

RULE 21

SUBPOENA

x x x x x x x x x

Sec. 4. Quashing a subpoena.

The court may quash a subpoena *duces tecum* upon motion promptly made and, in any event, at or before the time specified therein if it is unreasonable and oppressive, or the relevancy of the books, documents or things does not appear, or if the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.

The court may quash a subpoena *ad testificandum* on the ground that the witness is not bound thereby. In either case, the subpoena may be quashed on the ground that the witness fees and kilometrage allowed by these Rules were not tendered when the subpoena was served.

Our Ruling

The Court denies the Petition.

On the procedural issue, it is quite clear that Metrobank was notified of the Motion for Issuance of Subpoena *Duces Tecum Ad Testificandum*; in fact, it filed a timely Opposition thereto. The technical defect of lack of notice of hearing was thus cured by the filing of the Opposition.[32]

Nonetheless, contrary to petitioners' submission, the case of *Adorio* cannot apply squarely to this case. In *Adorio*, the request for subpoena *duces tecum* was sought against bank officials who were not parties to the criminal case for violation of *Batas Pambansa Blg*. 22. The situation is different here, as officers of the adverse party Metrobank are being compelled to testify as the calling party's main witnesses; likewise, they are tasked to bring with them documents which shall comprise the petitioners' principal evidence. This is not without significant consequences that affect the interests of the adverse party, as will be shown below.

As a rule, in civil cases, the procedure of calling the adverse party to the witness stand is not allowed, unless written interrogatories are first served upon the latter. This is embodied in Section 6, Rule 25 of the Rules, which provides –

Sec. 6. *Effect of failure to serve written interrogatories.*

Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal.

One of the purposes of the above rule is to prevent fishing expeditions and needless delays; it is there to maintain order and facilitate the conduct of trial. It will be presumed that a party who does not serve written interrogatories on the adverse party beforehand will most likely be unable to elicit facts useful

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[32] See *United Features Syndicate, Inc. v. Munsingwear Creation Manufacturing Company*, 258-A Phil. 841, 847 (1989).

to its case if it later opts to call the adverse party to the witness stand as its witness. Instead, the process could be treated as a fishing expedition or an attempt at delaying the proceedings; it produces no significant result that a prior written interrogatories might bring.

Besides, since the calling party is deemed bound by the adverse party's testimony,[33] compelling the adverse party to take the witness stand may result in the calling party damaging its own case. Otherwise stated, if a party cannot elicit facts or information useful to its case through the facility of written interrogatories or other mode of discovery, then the calling of the adverse party to the witness stand could only serve to weaken its own case as a result of the calling party's being bound by the adverse party's testimony, which may only be worthless and instead detrimental to the calling party's cause.

Another reason for the rule is that by requiring prior written interrogatories, the court may limit the inquiry to what is relevant, and thus prevent the calling party from straying or harassing the adverse party when it takes the latter to the stand.

Thus, the rule not only protects the adverse party from unwarranted surprises or harassment; it likewise prevents the calling party from conducting a fishing expedition or bungling its own case. Using its own judgment and discretion, the court can hold its own in resolving a dispute, and need not bear witness to the parties perpetrating unfair court practices such as fishing for evidence, badgering, or altogether ruining their own cases. Ultimately, such unnecessary processes can only constitute a waste of the court's precious time, if not pointless entertainment.

In the present case, petitioners seek to call Metrobank's officers to the witness stand as their initial and main witnesses, and to present documents in Metrobank's possession as part of their principal documentary evidence. This is improper. Petitioners may not be allowed, at the incipient phase of the presentation of their evidence-in-chief at that, to present

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[33] *Gaw v. Chua*, G.R. No. 160855, April 16, 2008, 551 SCRA 505, 517.

Metrobank's officers – who are considered adverse parties as well, based on the principle that corporations act only through their officers and duly authorized agents[34] – as their main witnesses; nor may they be allowed to gain access to Metrobank's documentary evidence for the purpose of making it their own. This is tantamount to building their whole case from the evidence of their opponent. The burden of proof and evidence falls on petitioners, not on Metrobank; if petitioners cannot prove their claim using their own evidence, then the adverse party Metrobank may not be pressured to hang itself from its own defense.

It is true that under the Rules, a party may, for good cause shown and to prevent a failure of justice, be compelled to give testimony in court by the adverse party who has not served written interrogatories. But what petitioners seek goes against the very principles of justice and fair play; they would want that Metrobank provide the very evidence with which to prosecute and build their case from the start. This they may not be allowed to do.

Finally, the Court may not turn a blind eye to the possible consequences of such a move by petitioners. As one of their causes of action in their Complaint, petitioners claim that they were not furnished with specific documents relative to their loan agreement with Metrobank at the time they obtained the loan and while it was outstanding. If Metrobank were to willingly provide petitioners with these documents even before petitioners can present evidence to show that indeed they were never furnished the same, any inferences generated from this would certainly not be useful for Metrobank. One may be that by providing petitioners with these documents, Metrobank would be admitting that indeed, it did not furnish petitioners with these documents prior to the signing of the loan agreement, and while the loan was outstanding, in violation of the law.

With the view taken of the case, the Court finds it unnecessary to further address the other issues raised by the parties, which

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[34] *BA Savings Bank v. Sia*, 391 Phil. 370, 377 (2000); *Restaurante Las Conchas v. Llego*, 372 Phil. 697, 708 (1999).

are irrelevant and would not materially alter the conclusions arrived at.

WHEREFORE, the Petition is **DENIED**. The assailed April 15, 2008 Decision and October 2, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 99535 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.*, concur.

FIRST DIVISION

[G.R. No. 186639. February 5, 2014]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **EMMANUEL C. CORTEZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); SECTION 14 (1); JUDICIAL CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLE; REQUISITES.— Applicants for original registration of title to land must establish compliance with the provisions of Section 14 of P.D. No. 1529 x x x. Section 14(1) of P.D. No. 1529 refers to the judicial confirmation of imperfect or incomplete titles to public land acquired under Section 48(b) of C.A. No. 141, as amended by P.D. No. 1073. "Under Section 14(1) [of P.D. No. 1529], applicants for registration of title must sufficiently establish *first*, that the subject land forms part of the disposable and alienable lands of the public domain; *second*, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and *third*, that it is under a *bona fide* claim of

ownership since June 12, 1945, or earlier."

2. ID.; ID.; ID.; ID.; ID.; A CERTIFICATION FROM THE PROPER GOVERNMENT AGENCY STATING THAT THE PARCEL OF LAND SUBJECT OF THE APPLICATION FOR REGISTRATION IS ALIENABLE AND DISPOSABLE IS REQUIRED.— To prove that the subject property forms part of the alienable and disposable lands of the public domain, Cortez adduced in evidence a survey plan Csd-00-000633 (conversion-subdivision plan of Lot 2697, MCadm 594-D, Pateros Cadastral Mapping) prepared by Geodetic Engineer Oscar B. Fernandez and certified by the Lands Management Bureau of the DENR. x x x However, Cortez' reliance on the x x x annotation in the survey plan is amiss; it does not constitute incontrovertible evidence to overcome the presumption that the subject property remains part of the inalienable public domain. In *Republic of the Philippines v. Tri-Plus Corporation*, the Court clarified that, the applicant must at the very least submit a certification from the proper government agency stating that the parcel of land subject of the application for registration is indeed alienable and disposable x x x. The annotation in the survey plan presented by Cortez is not the kind of evidence required by law as proof that the subject property forms part of the alienable and disposable land of the public domain. Cortez failed to present a certification from the proper government agency as to the classification of the subject property. Cortez likewise failed to present any evidence showing that the DENR Secretary had indeed classified the subject property as alienable and disposable. Having failed to present any incontrovertible evidence, Cortez' claim that the subject property forms part of the alienable and disposable lands of the public domain must fail.

3. ID.; ID.; ID.; ID.; ID.; AN APPLICANT IN A LAND REGISTRATION CASE MUST SHOW THE FACTS AND CIRCUMSTANCES EVIDENCING THE ALLEGED OWNERSHIP AND POSSESSION OF THE LAND.— Cortez failed to present any evidence to prove that he and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the subject property since June 12, 1945, or earlier. Cortez was only able to present oral and documentary evidence of his and his mother's ownership and possession of the subject property

since 1946, the year in which his mother supposedly inherited the same. Other than his bare claim that his family possessed the subject property since time immemorial, Cortez failed to present any evidence to show that he and his predecessors-in-interest indeed possessed the subject property prior to 1946; it is a mere claim and not factual proof of possession. "It is a rule that general statements that are mere conclusions of law and not factual proof of possession are unavailing and cannot suffice. An applicant in a land registration case cannot just harp on mere conclusions of law to embellish the application but must impress thereto the facts and circumstances evidencing the alleged ownership and possession of the land."

4. ID.; ID.; ID.; SECTION 14(2); ORIGINAL REGISTRATION OF LANDS ACQUIRED BY PRESCRIPTION; ONLY PRIVATE PROPERTIES MAY BE ACQUIRED THRU PRESCRIPTION.— Section 14(2) of P.D. No. 1529 sanctions the original registration of lands acquired by prescription under the provisions of existing laws. "As Section 14(2) [of P.D. No. 1529] categorically provides, only private properties may be acquired thru prescription and under Articles 420 and 421 of the Civil Code, only those properties, which are not for public use, public service or intended for the development of national wealth, are considered private."

5. ID.; ID.; ID.; ID.; ID.; LANDS OF THE PUBLIC DOMAIN THAT ARE PATRIMONIAL IN CHARACTER ARE SUSCEPTIBLE TO ACQUISITIVE PRESCRIPTION AND ELIGIBLE FOR REGISTRATION.— In *Heirs of Mario Malabanan v. Republic*, the Court however clarified that lands of the public domain that are patrimonial in character are susceptible to acquisitive prescription and, accordingly, eligible for registration under Section 14(2) of P.D. No. 1529 x x x. The Court nevertheless emphasized that there must be an official declaration by the State that the public dominion property is no longer intended for public use, public service, or for the development of national wealth before it can be acquired by prescription; that a mere declaration by government officials that a land of the public domain is already alienable and disposable would not suffice for purposes of registration under Section 14(2) of P.D. No. 1529. The Court further stressed that the period of acquisitive prescription would only begin to run from the time that the State officially declares that the public dominion property is

> no longer intended for public use, public service, or for the development of national wealth. x x x Accordingly, although lands of the public domain that are considered patrimonial may be acquired by prescription under Section 14(2) of P.D. No. 1529, before acquisitive prescription could commence, the property sought to be registered must not only be classified as alienable and disposable; it must also be declared by the State that it is no longer intended for public use, public service or the development of the national wealth. Thus, absent an express declaration by the State, the land remains to be property of public dominion.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Telan Hipe Flores Telan and Associates for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated February 17, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 87505. The CA affirmed the Decision[3] dated February 7, 2006 of the Regional Trial Court (RTC) of Pasig City, Branch 68, in LRC Case No. N-11496.

The Facts

On February 28, 2003, respondent Emmanuel C. Cortez (Cortez) filed with the RTC an application[4] for judicial confirmation of title over a parcel of land located at *Barangay*

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[1] *Rollo*, pp. 13-25.

[2] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court), with Associate Justices Portia Aliño-Hormachuelos and Ramon M. Bato, Jr., concurring; *id.* at 28-40.

[3] Issued by Judge Santiago G. Estrella; *id.* at 55A-60.

[4] *Id.* at 44-48.

(Poblacion) Aguho, P. Herrera Street, Pateros, Metro Manila. The said parcel of land has an area of 110 square meters and more particularly described as Lot No. 2697-B of the Pateros Cadastre. In support of his application, Cortez submitted, *inter alia*, the following documents: (1) tax declarations for various years from 1966 until 2005; (2) survey plan of the property, with the annotation that the property is classified as alienable and disposable; (3) technical description of the property, with a certification issued by a geodetic engineer; (4) tax clearance certificate; (5) extrajudicial settlement of estate dated March 21, 1998, conveying the subject property to Cortez; and (6) *escritura de particion extrajudicial* dated July 19, 1946, allocating the subject property to Felicisima Cotas – Cortez' mother.

As there was no opposition, the RTC issued an Order of General Default and Cortez was allowed to present his evidence *ex-parte*.

Cortez claimed that the subject parcel of land is a portion of Lot No. 2697, which was declared for taxation purposes in the name of his mother. He alleged that Lot No. 2697 was inherited by his mother from her parents in 1946; that, on March 21, 1998, after his parents died, he and his siblings executed an Extra-Judicial Settlement of Estate over the properties of their deceased parents and one of the properties allocated to him was the subject property. He alleged that the subject property had been in the possession of his family since time immemorial; that the subject parcel of land is not part of the reservation of the Department of Environment and Natural Resources (DENR) and is, in fact, classified as alienable and disposable by the Bureau of Forest Development (BFD).

Cortez likewise adduced in evidence the testimony of Ernesto Santos, who testified that he has known the family of Cortez for over sixty (60) years and that Cortez and his predecessors-in-interest have been in possession of the subject property since he came to know them.

On February 7, 2006, the RTC rendered a Decision,[5] which granted Cortez' application for registration, *viz*:

> WHEREFORE, finding the application meritorious, the Court DECLARES, CONFIRMS, and ORDERS the registration of the applicant's title thereto.
>
> As soon as this Decision shall have become final and after payment of the required fees, let the corresponding Decrees be issued in the name of the applicant, Emmanuel C. Cortez.
>
> Let copies of this Decision be furnished the Office of the Solicitor General, Land Registration Authority, Land Management Bureau, and the Registry of Deeds of Rizal.
>
> SO ORDERED.[6]

In granting Cortez' application for registration of title to the subject property, the RTC made the following ratiocinations:

> From the foregoing, the Court finds that there is sufficient basis to grant the relief prayed for. It having been established by competent evidence that the possession of the land being applied for by the applicant and his predecessor-in-interest have been in open, actual, uninterrupted, and adverse possession, under claim of title and in the concept of owners, all within the time prescribed by law, the title of the applicant should be and must be AFFIRMED and CONFIRMED.[7]

The Republic of the Philippines (petitioner), represented by the Office of the Solicitor General, appealed to the CA, alleging that the RTC erred in granting the application for registration despite the failure of Cortez to comply with the requirements for original registration of title. The petitioner pointed out that, although Cortez declared that he and his predecessors-in-interest were in possession of the subject parcel of land since time immemorial, no document was ever presented that would establish his predecessors-in-interest's possession of the same

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[5] *Id.* at 55A-60.

[6] *Id.* at 59-60.

[7] *Id.* at 59.

during the period required by law. That petitioner claimed that Cortez' assertion that he and his predecessors-in-interest had been in open, adverse, and continuous possession of the subject property for more than thirty (30) years does not constitute well-neigh incontrovertible evidence required in land registration cases; that it is a mere claim, which should not have been given weight by the RTC.

Further, the petitioner alleged that there was no certification from any government agency that the subject property had already been declared alienable and disposable. As such, the petitioner claims, Cortez' possession of the subject property, no matter how long, cannot confer ownership or possessory rights.

On February 17, 2009, the CA, by way of the assailed Decision,[8] dismissed the petitioner's appeal and affirmed the RTC Decision dated February 7, 2006. The CA ruled that Cortez was able to prove that the subject property was indeed alienable and disposable, as evidenced by the declaration/notation from the BFD.

Further, the CA found that Cortez and his predecessors-in-interest had been in open, continuous, and exclusive possession of the subject property for more than 30 years, which, under Section 14(2) of Presidential Decree (P.D.) No. 1529[9], sufficed to convert it to private property. Thus:

> It has been settled that properties classified as alienable and disposable land may be converted into private property by reason of *open*, *continuous* and *exclusive* possession of at least 30 years. Such property now falls within the contemplation of "private lands" under Section 14(2) of PD 1529, over which title by prescription can be acquired. Thus, under the second paragraph of Section 14 of PD 1529, those who are in possession of alienable and disposable land, and whose possession has been characterized as open, continuous and exclusive for 30 years or more, may have the right to register their title to

[8] *Id.* at 28-40.

[9] Property Registration Decree.

such land despite the fact that their possession of the land commenced only after 12 June 1945. x x x

x x x x x x x x x

While it is significant to note that applicant-appellee's possession of the subject property can be traced from his mother's possession of the same, the records, indeed, show that his possession of the subject property, following Section 14(2) [of PD 1529], is to be reckoned from January 3, 1968, when the subject property was declared alienable and disposable and not way back in 1946, the year when he inherited the same from his mother. At any rate, at the time the application for registration was filed in 2003, there was already sufficient compliance with the requirement of possession. His possession of the subject property has been characterized as open, continuous, exclusive and notorious possession and occupation in the concept of an owner.[10] (Citations omitted)

Hence, the instant petition.

The Issue

The sole issue to be resolved by the Court is whether the CA erred in affirming the RTC Decision dated February 7, 2006, which granted the application for registration filed by Cortez.

The Court's Ruling

The petition is meritorious.

At the outset, the Court notes that the RTC did not cite any specific provision of law under which authority Cortez' application for registration of title to the subject property was granted. In granting the application for registration, the RTC merely stated that "the possession of the land being applied for by [Cortez] and his predecessor-in-interest have been in open, actual, uninterrupted, and adverse possession, under claim of title and in the concept of owners, all within the time prescribed by law[.]"[11] On the other hand, the CA assumed that Cortez' application for registration was based on Section 14(2) of P.D.

[10] *Rollo*, pp. 35, 38.

[11] *Id.* at 59.

No. 1529. Nevertheless, Cortez, in the application for registration he filed with the RTC, proffered that should the subject property not be registrable under Section 14(2) of P.D. No. 1529, it could still be registered under Section 48(b) of Commonwealth Act No. 141 (C.A. No. 141), or the Public Land Act, as amended by P.D. No. 1073[12] in relation to Section 14(1) of P.D. No. 1529. Thus, the Court deems it proper to discuss Cortez' application for registration of title to the subject property *vis-à-vis* the provisions of Section 14(1) and (2) of P.D. No. 1529.

Applicants for original registration of title to land must establish compliance with the provisions of Section 14 of P.D. No. 1529, which pertinently provides that:

Sec. 14. *Who may apply*. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the

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[12] Section 48(b) of the Public Land Act, as amended by P.D. No. 1073, provides that:

Section 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

x x x x x x x x x

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

x x x x x x x x x

After a careful scrutiny of the records of this case, the Court finds that Cortez failed to comply with the legal requirements for the registration of the subject property under Section 14(1) and (2) of P.D. No. 1529.

Section 14(1) of P.D. No. 1529 refers to the judicial confirmation of imperfect or incomplete titles to public land acquired under Section 48(b) of C.A. No. 141, as amended by P.D. No. 1073. "Under Section 14(1) [of P.D. No. 1529], applicants for registration of title must sufficiently establish *first*, that the subject land forms part of the disposable and alienable lands of the public domain; *second*, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and *third*, that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier."[13]

The first requirement was not satisfied in this case. To prove that the subject property forms part of the alienable and disposable lands of the public domain, Cortez adduced in evidence a survey plan Csd-00-000633[14] (conversion-subdivision plan of Lot 2697, MCadm 594-D, Pateros Cadastral Mapping) prepared by Geodetic Engineer Oscar B. Fernandez and certified by the Lands Management Bureau of the DENR. The said survey plan contained the following annotation:

This survey is inside L.C. Map No. 2623, Project No. 29, classified as alienable & disposable by the Bureau of Forest Development on Jan. 3, 1968.

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[13] *See Republic v. Rizalvo, Jr.*, G.R. No. 172011, March 7, 2011, 644 SCRA 516, 523.

[14] Records, p. 231.

However, Cortez' reliance on the foregoing annotation in the survey plan is amiss; it does not constitute incontrovertible evidence to overcome the presumption that the subject property remains part of the inalienable public domain. In *Republic of the Philippines v. Tri-Plus Corporation*,[15] the Court clarified that, the applicant must at the very least submit a certification from the proper government agency stating that the parcel of land subject of the application for registration is indeed alienable and disposable, *viz*:

> It must be stressed that incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable.
>
> In the present case, the only evidence to prove the character of the subject lands as required by law is the notation appearing in the Advance Plan stating in effect that the said properties are alienable and disposable. However, this is hardly the kind of proof required by law. **To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the Government that the lands applied for are alienable and disposable.** In the case at bar, while the Advance Plan bearing the notation was certified by the Lands Management Services of the DENR, **the certification refers only to the technical correctness of the survey plotted in the said plan and has nothing to do whatsoever with the nature and character of the property surveyed.** Respondents failed to submit a certification from the proper government agency to prove that the lands subject for registration are indeed alienable and disposable.[16] (Citations omitted and emphasis ours)

Similarly, in *Republic v. Roche*,[17] the Court declared that:

> Respecting the third requirement, the applicant bears the burden of proving the status of the land. **In this connection, the Court has**

[15] 534 Phil. 181 (2006).

[16] *Id.* at 194-195.

[17] G.R. No. 175846, July 6, 2010, 624 SCRA 116.

held that he must present a certificate of land classification status issued by the Community Environment and Natural Resources Office (CENRO) or the Provincial Environment and Natural Resources Office (PENRO) of the DENR. He must also prove that the DENR Secretary had approved the land classification and released the land as alienable and disposable, and that it is within the approved area per verification through survey by the CENRO or PENRO. Further, the applicant must present a copy of the original classification approved by the DENR Secretary and certified as true copy by the legal custodian of the official records. These facts must be established by the applicant to prove that the land is alienable and disposable.

Here, Roche did not present evidence that the land she applied for has been classified as alienable or disposable land of the public domain. She submitted only the survey map and technical description of the land which bears no information regarding the land's classification. She did not bother to establish the status of the land by any certification from the appropriate government agency. Thus, it cannot be said that she complied with all requisites for registration of title under Section 14(1) of P.D. 1529.[18] (Citations omitted and emphasis ours)

The annotation in the survey plan presented by Cortez is not the kind of evidence required by law as proof that the subject property forms part of the alienable and disposable land of the public domain. Cortez failed to present a certification from the proper government agency as to the classification of the subject property. Cortez likewise failed to present any evidence showing that the DENR Secretary had indeed classified the subject property as alienable and disposable. Having failed to present any incontrovertible evidence, Cortez' claim that the subject property forms part of the alienable and disposable lands of the public domain must fail.

Anent the second and third requirements, the Court finds that Cortez likewise failed to establish the same. Cortez failed to present any evidence to prove that he and his predecessors-

[18] *Id.* at 121-122.

in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the subject property since June 12, 1945, or earlier. Cortez was only able to present oral and documentary evidence of his and his mother's ownership and possession of the subject property since 1946, the year in which his mother supposedly inherited the same.

Other than his bare claim that his family possessed the subject property since time immemorial, Cortez failed to present any evidence to show that he and his predecessors-in-interest indeed possessed the subject property prior to 1946; it is a mere claim and not factual proof of possession. "It is a rule that general statements that are mere conclusions of law and not factual proof of possession are unavailing and cannot suffice. An applicant in a land registration case cannot just harp on mere conclusions of law to embellish the application but must impress thereto the facts and circumstances evidencing the alleged ownership and possession of the land."[19]

Further, the earliest tax declaration presented by Cortez was only in 1966. Cortez failed to explain why, despite his claim that he and his predecessors-in-interest have been in possession of the subject property since time immemorial, it was only in 1966 that his predecessors-in-interest started to declare the same for purposes of taxation.

That Cortez and his predecessors-in-interest have been in possession of the subject property for fifty-seven (57) years at the time he filed his application for registration in 2003 would likewise not entitle him to registration thereof under Section 14(2) of P.D. No. 1529.

Section 14(2) of P.D. No. 1529 sanctions the original registration of lands acquired by prescription under the provisions of existing laws. "As Section 14(2) [of P.D. No. 1529] categorically provides, only private properties may be

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[19] *Republic v. Dela Paz*, G.R. No. 171631, November 15, 2010, 634 SCRA 610, 622-623, citing *Mistica v. Republic*, G.R. No. 165141, September 11, 2009, 599 SCRA 401, 410-411 and *Lim v. Republic*, G.R. Nos. 158630 and 162047, September 4, 2009, 598 SCRA 247, 262.

acquired thru prescription and under Articles 420 and 421 of the Civil Code, only those properties, which are not for public use, public service or intended for the development of national wealth, are considered private."[20]

In *Heirs of Mario Malabanan v. Republic*,[21] the Court however clarified that lands of the public domain that are patrimonial in character are susceptible to acquisitive prescription and, accordingly, eligible for registration under Section 14(2) of P.D. No. 1529, *viz*:

> The Civil Code makes it clear that patrimonial property of the State may be acquired by private persons through prescription. This is brought about by Article 1113, which states that "[a]ll things which are within the commerce of man are susceptible to prescription," and that [p]roperty of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription."
>
> There are two modes of prescription through which immovables may be acquired under the Civil Code. The first is ordinary acquisitive prescription, which, under Article 1117, requires possession in good faith and with just title; and, under Article 1134, is completed through possession of ten (10) years. **There is nothing in the Civil Code that bars a person from acquiring patrimonial property of the State through ordinary acquisitive prescription, nor is there any apparent reason to impose such a rule.** At the same time, there are indispensable requisites–good faith and just title. The ascertainment of good faith involves the application of Articles 526, 527, and 528, as well as Article 1127 of the Civil Code, provisions that more or less speak for themselves.[22] (Citation omitted and emphasis ours)

The Court nevertheless emphasized that there must be an official declaration by the State that the public dominion property is no longer intended for public use, public service, or for the development of national wealth before it can be acquired by prescription; that a mere declaration by government officials

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[20] *Republic v. Espinosa*, G.R. No. 171514, July 18, 2012, 677 SCRA 92, 106.

[21] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

[22] *Id.* at 207.

that a land of the public domain is already alienable and disposable would not suffice for purposes of registration under Section 14(2) of P.D. No. 1529. The Court further stressed that the period of acquisitive prescription would only begin to run from the time that the State officially declares that the public dominion property is no longer intended for public use, public service, or for the development of national wealth. Thus:

> Let us now explore the effects under the Civil Code of a declaration by the President or any duly authorized government officer of alienability and disposability of lands of the public domain. Would such lands so declared alienable and disposable be converted, under the Civil Code, from property of the public dominion into patrimonial property? After all, by connotative definition, alienable and disposable lands may be the object of the commerce of man; Article 1113 provides that all things within the commerce of man are susceptible to prescription; and the same provision further provides that patrimonial property of the State may be acquired by prescription.
>
> Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription. After all, Article 420 (2) makes clear that those property "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. For as long as theproperty belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when it is "intended for some public service or for the development of the national wealth."
>
> **Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the**

development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[23] (Emphasis supplied)

In *Republic v. Rizalvo*,[24] the Court deemed it appropriate to reiterate the ruling in *Malabanan, viz*:

> On this basis, respondent would have been eligible for application for registration because his claim of ownership and possession over the subject property even exceeds thirty (30) years. **However, it is jurisprudentially clear that the thirty (30)-year period of prescription for purposes of acquiring ownership and registration of public land under Section 14 (2) of P.D. No. 1529 only begins from the moment the State expressly declares that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial.** x x x.[25] (Citation omitted and emphasis ours)

Accordingly, although lands of the public domain that are considered patrimonial may be acquired by prescription under Section 14(2) of P.D. No. 1529, before acquisitive prescription could commence, the property sought to be registered must not only be classified as alienable and disposable; it must also be declared by the State that it is no longer intended for public use, public service or the development of the national wealth. Thus, absent an express declaration by the State, the land remains to be property of public dominion.[26]

The Court finds no evidence of any official declaration from the state attesting to the patrimonial character of the subject property. Cortez failed to prove that acquisitive prescription has begun to run against the State, much less that he has acquired

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[23] *Id.* at 202-203.

[24] G.R. No. 172011, March 7, 2011, 644 SCRA 516.

[25] *Id.* at 526.

[26] See *Republic v. Ching*, G.R. No. 186166, October 20, 2010, 634 SCRA 415, 428.

title to the subject property by virtue thereof. It is of no moment that Cortez and his predecessors-in-interest have been in possession of the subject property for 57 years at the time he applied for the registration of title thereto. "[I]t is not the notorious, exclusive and uninterrupted possession and occupation of an alienable and disposable public land for the mandated periods that converts it to patrimonial. The indispensability of an official declaration that the property is now held by the State in its private capacity or placed within the commerce of man for prescription to have any effect against the State cannot be overemphasized."[27]

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition is **GRANTED**. The Decision dated February 17, 2009 of the Court of Appeals in CA-G.R. CV No. 87505, which affirmed the Decision dated February 7, 2006 of the Regional Trial Court of Pasig City, Branch 68, in LRC Case No. N-11496, is hereby **REVERSED** and **SET ASIDE**. The Application for Registration of Emmanuel C. Cortez in LRC Case No. N-11496 is **DENIED** for lack of merit.

SO ORDERED.

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

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[27] See *Republic v. Metro Index Realty and Development Corporation*, G.R. No. 198585, July 2, 2012, 675 SCRA 439, 446.

SECOND DIVISION

[G.R. No. 189248. February 5, 2014]

TEODORO S. TEODORO (Deceased), Substituted by his heirs/sons NELSON TEODORO and ROLANDO TEODORO, *petitioners, vs.* **DANILO ESPINO, ROSARIO SANTIAGO, JULIANA CASTILLO, PAULINA LITAO, RAQUEL RODRIGUEZ, RUFINA DELA CRUZ, and LEONILA CRUZ,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY; RULES.—** The ground rules in forcible entry cases: (1) One employs force, intimidation, threat, strategy or stealth to deprive another of physical possession of real property. (2) Plaintiff (Teodoro Teodoro) must allege and prove prior physical possession of the property in litigation until deprived thereof by the defendant (herein respondents). This requirement implies that the possession of the disputed land by the latter was unlawful from the beginning. (3) The sole question for resolution hinges on the physical or material possession (possession *de facto*) of the property. Neither a claim of juridical possession (possession *de jure*) nor an averment of ownership by the defendant can, at the outset, preclude the court from taking cognizance of the case. (4) Ejectment cases proceed independently of any claim of ownership, and the plaintiff needs merely to prove prior possession *de facto* and undue deprivation thereof.

2. **CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; CO-OWNERSHIP; ALL CO-OWNERS ARE ENTITLED TO EXERCISE THE RIGHT OF POSSESSION OVER THE CO-OWNED PROPERTY; CASE AT BAR.—** In the sense that Teodoro Teodoro has not proven exclusive ownership, the MTC was right. But exclusive ownership of Lot No. 2476 or a portion thereof is not in this case required of Teodoro Teodoro for him to be entitled to possession. Co-ownership, the finding of both the MTC at first instance and by the RTC on appeal, is sufficient. x x x Certainly, and as

found by the trial courts, the whole of Lot No. 2476 including the portion now litigated is, owing to the fact that it has remained registered in the name of Genaro who is the common ancestor of both parties herein, co-owned property. All, or both Teodoro Teodoro and respondents are entitled to exercise the right of possession as co-owners. Neither party can exclude the other from possession. Although the property remains unpartitioned, the respondents in fact possess specific areas. Teodoro Teodoro can likewise point to a specific area, which is that which was possessed by Petra. Teodoro Teodoro cannot be dispossessed of such area, not only by virtue of Petra's bequeathal in his favor but also because of his own right of possession that comes from his co-ownership of the property. As the RTC concluded, petitioners, as heirs substituting Teodoro Teodoro in this suit, should be restored in the lawful possession of the disputed area.

APPEARANCES OF COUNSEL

Samonte Felicen Tria Samonte Law Offices for petitioners.
Nenita D.C. Tuazon & Associates Law Office for respondents.

D E C I S I O N

PEREZ, *J.*:

We here have what appears to be a cut and dried case for ejectment which has, nonetheless, resulted in three conflicting and varying decisions of the lower courts. We exercise judicial restraint: we simply delineate the possessory rights of the warring parties and refrain from ruling on these squabbling heirs' respective claims of ownership.

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Decision[1] of the Court of Appeals in CA-G.R. SP No. 99805 which reversed and set aside the

[1] Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Isaias P. Dicdican, concurring. *Rollo,* pp. 65-74.

Decision[2] of the Regional Trial Court (RTC) Branch 81, Malolos, Bulacan in Civil Case No. 634-M-06 which, in turn, vacated and set aside the Decision[3] of the Municipal Trial Court (MTC), Bulacan, Bulacan in Civil Case No. 1240. The case is for Forcible Entry filed by the predecessor-in-interest of petitioners Nelson and Rolando Teodoro, heirs of Teodoro S. Teodoro (Teodoro Teodoro), against respondents Danilo Espino, Rosario Santiago, Juliana Castillo, Paulina Litao, Raquel Rodriguez, Rufina dela Cruz and Leonila Cruz, a squabble for physical possession of a portion of a real property, the ownership of which is traceable to Genaro Teodoro (Genaro).

The subject property is a portion within Cadastral Lot No. 2476 with a total area of 248 square meters, covered by Tax Declaration No. 99-05003-0246, registered in the name of Genaro, long deceased ascendant of all the parties. The subject property pertains to the vacant lot where the old ancestral house of Genaro stood until its demolition in June 2004, at the instance of Teodoro Teodoro.

Genaro had five children: Santiago; Maria, from whom respondents descended and trace their claim of ownership and right of possession; Petra, Mariano, Teodoro Teodoro's father; and Ana. Genaro and his children are all deceased.

Respondents' respective parents are first cousins of Teodoro Teodoro. All parties are collateral relatives of Petra Teodoro: Teodoro Teodoro is her nephew while respondents are her grandnephews and grandnieces, descendants of Petra's sister, Maria Teodoro.

Of all Genaro's children, only Petra occupied the subject property, living at the ancestral house. Genaro's other children, specifically Santiago, Maria and Mariano were bequeathed, and stayed at, a different property within the same locality, still from the estate of their father.

After Petra's death, her purported will, a holographic will,

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[2] Penned by Judge Herminia V. Pasamba. *Id.* at 174-178.

[3] Penned by Judge Ester R. Chua. *Id.* at 134-137.

was probated in Special Proceedings No. 1615-M before RTC, Branch 8, Malolos, Bulacan, which Decision on the will's extrinsic validity has become final and executory.[4] In the will, Petra, asserting ownership, devised the subject property to Teodoro Teodoro.

Teodoro Teodoro effected the demolition of the ancestral house, intending to use the subject property for other purposes.

Soon thereafter, respondents, who resided at portions of Lot No. 2476 that surround the subject property on which the ancestral house previously stood, erected a fence on the surrounding portion, barricaded its frontage, and put up a sign thereat, effectively dispossessing Teodoro Teodoro of the property bequeathed to him by Petra.

After Teodoro Teodoro's demand for respondents to vacate the subject property went unheeded, he filed the complaint for forcible entry against respondents, alleging the following in pertinent part:

> 3. [Teodoro Teodoro] is a nephew of the deceased Petra Teodoro *vda. De* Salonga x x x who executed a holographic will designating him therein as administrator of her estate and likewise devised in his favor a parcel of land located in Purok 2, Bambang, Bulacan, Bulacan and the ancestral house built therein. Other properties of Petra Teodoro were bequeathed in favor of other named heirs. x x x.
>
> 4. Aforementioned parcel of land with the ancestral house was in turn inherited by the decedent Petra Teodoro from her father Genaro Teodoro who also gave separate properties to his four other children, who are all dead, namely, Santiago who has eight (8) children, Maria who has six (6) children, Ana who has no child and Mariano who has eight (8) children including herein [Teodoro Teodoro] as the eldest;
>
> 5. It is of common knowledge in the locality that the subject property where the ancestral house stood was given by Genaro Teodoro to [his] daughter Petra Teodoro to the exclusion of all others. Petra Teodoro lived in that property all her life. x x x.
>
> x x x x x x x x x

[4] CA *rollo*, pp. 81-89.

This subject property is declared for taxation purposes in the name of [Teodoro Teodoro's] grandfather, Genaro Teodoro as shown by the hereto attached photocopy of Tax Declaration of Real Property No. 99-05003-0246 for the year 2000 which is marked as **Annex "F"**;

x x x x x x x x x

10. [Subject property] having been given to [Teodoro Teodoro] as a devisee in the approved will of Petra Teodoro, it became his absolute property to the exclusion of all others;

11. Sometime in July 2004, [Teodoro Teodoro] as the absolute owner and possessor thereof, decided to demolish the already dilapidated ancestral house in the subject property to clear the same for other available uses/purposes. x x x.

12. By means of force and intimidation, [Teodoro Teodoro] was ousted likewise prevented by [respondents] from entering the subject property. [Respondents] have also converted/appropriated for themselves the exclusive use of the subject property into their own parking lot and other personal use, to the exclusion and damage of [Teodoro Teodoro];[5] (Emphasis supplied).

In their Answer, respondents asserted their own ownership and possession of the subject property, countering that:

5. It is worth to mention that [respondents] Danilo Espino and Rosario Santiago are residing thereat for more than fifty (50) years, while [respondents] Paulina Litao and Rufina dela Cruz are resident of the subject place for more than sixty (60) years, most of them residing thereat since birth, at the time that their grandmother Maria Teodoro is still living and residing thereat.

6. Thus, when siblings Maria Teodoro (grandmother of [respondents]), Petra (to whom the subject property was inherited) and Mariano (father of [Teodoro Teodoro]) died, the heirs, who include [respondents] and [Teodoro Teodoro] extrajudicially, among themselves, partitioned the property left by their ascendants, which are still in the name of the siblings' father Genaro Teodoro. [Respondents], since they are already residing in the subject property and had built their respective houses therein, had with them the said subject [property]. x x x.

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[5] *Id.* at 62-66.

7. [Respondents], through their authorized representative, [respondent] Rosario Santiago, in the exercise of their act of ownership of the subject lot paid for its real property taxes. x x x.

8. x x x [Teodoro Teodoro] deliberately failed to consider and mention in his complaint that there was already a decision rendered by court, declaring the subject property as part of the property left by Petra Teodoro to her legitimate heirs, which include among others [respondents].

9. That however, due to [respondents'] failure as substituted heirs to execute the order, dated May 18, 1994, a **Motion for the Revival of Judgment** was filed and heard before **Branch 10 of the Regional Trial Court of Bulacan**. The Honorable Court x x x resolved x x x the extent of the allowance and admission to probate the holographic will of the late Petra Teodoro, where a Certificate of Allowance dated February 14, 1990 was subsequently issued, as its Decision dated June 29, 1989 became final and executory, affect the revival of judgment.

x x x x x x x x x

13. While it is true that the dilapidated ancestral house in the subject property was demolished; however, the said act, as suggested by [Teodoro Teodoro] was allowed by [respondents] (who had their respective houses built in the same lot where the same is constructed) in order to have the same be partitioned among themselves. As [Teodoro Teodoro] was constantly complaining that the property left to him and his siblings is less than the subject property given to the [respondents] in area, they agreed verbally that if the ancestral house will be demolished, a surveyor would be at ease in surveying the same and determine if indeed the area is more than that allotted to [Teodoro Teodoro], which in that case, as per agreement, the excess, if any will suffice the lack in area of [Teodoro Teodoro]. It was however found out that the area of the subject property was less than the area that should be allocated and apportioned as shares of [respondents], hence they [intimated] the same to [Teodoro Teodoro], who got mad and threaten[ed] to get the subject property from them.

14. The putting of signs "*No Trespassing*" posted at the frontage of the subject property is an allowable act by owners, residing thereat to protect their property against intruders, hence there is nothing wrong for [respondents] to put the same. x x x.

15. There is no truth, as what [Teodoro Teodoro] claimed in **paragraph 12** of his complaint that he was ousted and prevented from entering the subject property by [respondents], because in the first place he could not be ousted thereat, as he is not in possession of the said property.[6] (Emphasis theirs).

After trial, the MTC dismissed the complaint, ruling on the issue of ownership and ultimately resolving the issue of who between Teodoro Teodoro and respondents had a better right to possess the subject property:

x x x [Teodoro Teodoro's] claim of ownership over the subject lot stemmed from the approved and duly probated Holographic Will of Petra Teodoro. Although it its undisputed that Petra Teodoro was in actual possession of the subject lot prior to her demise and that she left a Holographic Will wherein the subject lot was bequeathed to [Teodoro Teodoro], the probate of her last will has not finally settled the question of ownership over the subject lot. Clearly, the subject lot still forms part of the estate of the late Genaro Teodoro. In the absence of an actual and approved partition plan among his heirs, the subject lot remains part of the Genaro Teodoro's estate. Since his children Santiago, Maria, Petra, Maraino and Ana are all deceased, their children or grandchildren by right of representation have the right to inherit from their ancestor.

xxx x x x xxx

A person who claims that he has a better right to real property must prove his ownership of the same x x x. Clearly, [Teodoro Teodoro] has failed to prove his ownership over the property or that of his devisee Petra Teodoro. Thus, the court is convinced that the possession of [respondents] over the subject lot should not be disturbed, until and unless the question of ownership over the same shall have been finally resolved before the appropriate court.

xxx x x x xxx

WHEREFORE, judgment is hereby rendered dismissing the complaint and the counterclaim interposed in relation thereto, without pronouncement as to costs.[7]

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

[7] *Rollo,* pp. 135-137.

The RTC, in its appellate jurisdiction over forcible entry cases, acting on Teodoro Teodoro's appeal, adopted the factual findings of the MTC, but reversed the ruling, ruled in favor of Teodoro Teodoro and ordered the ejectment of respondents from the subject property. It pithily ruled, thus:

> But the bottom line for resolution in this case is who has the prior physical possession of the subject parcel. x x x.
>
> The late Petra Teodoro's share to the inheritance of his father Genaro is admittedly the old ancestral house and the lot over which it stands. x x x.
>
> [Teodoro Teodoro] claims right to possession only over said portion (now the vacant space x x x not the entire lot 2476 until he was displaced therefrom by the [respondents] through force). **[Teodoro Teodoro] does not contest the perimeter area of Lot 2476 where [respondents] are residing**. He has acknowledged in clear terms that the rest of the area of Lot 2476 is occupied by [respondents]. The assailed decision recognized that Petra Teodoro was in actual possession of the lot prior to her death. It is [Teodoro Teodoro's] argument that Petra Teodoro, tacked [from by Teodoro Teodoro], has had prior physical possession of the controverted portion of lot 2476. He went on arguing that regardless of whether or not the duly probated will completely settled the issue of partition of the remaining estate of Genaro Teodoro, he has the prior actual and physical possession of the vacant space where the old ancestral house formerly stands, passed on to him by the late Petra Teodoro, a fact [respondents] deny. [Respondents] even belied that they have ousted and restrained [Teodoro Teodoro] from entering the subject property.
>
> Said pretension is however negated by evidence showing the barricaded vacant space or disputed area consisting of 120 square meters, more or less (approximate width of lot is 7.55 meters, approximate length is 17.9 meters with indented portion measuring 1.5 meters deep x x x), where the cemented portion of the flooring of the bakery near the national road lease by [respondents] is still existing x x x and over which he exercised control and constructive possession. x x x.
>
> x x x x x x x x x
>
> [Teodoro Teodoro] anchors on the other hand his claim on the Holographic Will of Petra Teodoro dated May 1, 1973 x x x duly probated and approved in a Decision x x x dated June 19, 1989 of

Branch 8 of this Court in SP Proceeding No. 1615-M, which Decision has become final and executory as of February 14, 1990 x x x bequeathing the disputed portion of Lot 2476 and the old ancestral house thereon to him, the letters of administration issued to him by Branch 8 of this Court x x x, the Project of Partition submitted to the said court x x x plus his possession of the vacant area or disputed portion of [L]ot 2476. [Respondents] has stressed that he is not contesting the rest of [L]ot 2476 occupied by the houses of [respondents].

Analyzing the facts of the case, the lower [court] concluded that the subject parcel is a part of the estate of the late Genaro Teodoro and in the absence of an approved partition among the heirs, remains a community property over which the legal heirs of Genaro Teodoro have the right to inherit. All therefore are entitled to exercise the right of dominion including the right of possession.

This Court disagrees with the said ruling applying the plethora of cases decisive of the issue and consistent with the established jurisprudence that the lower court cannot dispose with finality the issue of ownership-such issue being inutile in an ejectment suit except to throw light on the question of possession.

Given the foregoing, [Teodoro Teodoro] has established a valid claim to institute the eviction suit against [respondents] over the disputed area or vacant portion of Lot 2476 and for him to be restored therein.

x x x x x x x x x

WHEREFORE, premises considered, finding reversible error on the appealed judgment, the same is hereby VACATED and SET ASIDE and a new one is entered as follows:

1. Ordering that [Teodoro Teodoro] be restored in the lawful possession of the disputed area of Lot 2476 and for the eviction therefore of [respondents] on said portion; and

2. [Respondents] to pay the costs of the suit.[8]

With the reversal of the MTC's ruling, respondents then appealed the RTC's decision to the Court of Appeals. The appellate court reversed the RTC, likewise dismissed the

[8] *Id.* at 176-178.

complaint as the MTC had done, but did not reach the same result as that of the inferior court. It specifically ruled that Teodoro Teodoro:

(1) never had physical possession of the subject property, not having lived there at anytime, whether while Petra was alive nor after her death;

(2) did not adduce evidence before the lower courts on proof of payment of any real property tax on the disputed vacant lot, portion of Lot No. 2476, or to the whole of Lot No. 2476;

(3) did not solely or unilaterally cause the demolition of the ancestral house such a fact equating to his exclusive ownership of the subject property and complete control and dominion over it; and

(4) cannot tack his alleged possession of the subject property to that of Petra Teodoro simply by virtue of the latter's holographic will, leading to the issue of ownership which is insignificant in forcible entry cases.

In all, the appellate court found that Teodoro Teodoro (substituted by his heirs Nelson and Rolando Teodoro at that juncture) "failed to discharge the burden of proof that he had prior actual physical possession of the subject [property] before it was barricaded by [respondents] to warrant the institution of the forcible entry suit." The appellate court disposed of the case, thus:

WHEREFORE, premises considered, the assailed Decision [dated] 28 February 2007 and Resolution dated 26 June 2007 of the Regional Trial Court of Malolos, Bulacan, Branch 81 are hereby **REVERSED** and **SET ASIDE**, and the instant case is **DISMISSED** for lack of merit.[9]

Hence, this appeal by *certiorari* filed by the heirs of Teodoro Teodoro raising the following errors in the appellate court's dismissal of the complaint:

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[9] *Id.* at 73.

1. The Honorable Court of Appeals failed to take notice of relevant facts such as petitioner Teodoro's exercise of possessory rights over the subject property, among others, which if properly considered, will justify a different conclusion.

2. The Honorable Court of Appeals misappreciated undisputed facts such as the respondents' fencing of the vacant area cleared by petitioner Teodoro and their barricading of the frontage thereof, among others, that deprived petitioner Teodoro his possessory rights over the vacant area.

3. The findings of the Honorable Court of Appeals are grounded entirely on speculation, surmises or conjectures.

4. There is grave abuse of discretion in the appreciation of facts in the assailed Decision.[10]

The assigned errors define the issue for our resolution which is whether or not the act of respondents in barricading the frontage of the portion of Lot No. 2476 on which stood the ancestral house occupied by Petra amounted to Teodoro Teodoro's unlawful dispossession thereof through the forcible entry of respondents.

The ground rules in forcible entry cases:[11]

(1) One employs force, intimidation, threat, strategy or stealth to deprive another of physical possession of real property.

(2) Plaintiff (Teodoro Teodoro) must allege and prove prior physical possession of the property in litigation until deprived thereof by the defendant (herein respondents). This requirement implies that the possession of the disputed land by the latter was unlawful from the beginning.

(3) The sole question for resolution hinges on the physical or material possession (possession *de facto*) of the property. Neither a claim of juridical possession (possession *de jure*) nor an averment of ownership by the defendant can, at the

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[10] *Id.* at 49.

[11] See Rules of Court, Rule 70, Section 1 and *Bongato v. Sps. Malvar*, 436 Phil. 109, 122-123 (2002).

outset, preclude the court from taking cognizance of the case.

(4) Ejectment cases proceed independently of any claim of ownership, and the plaintiff needs merely to prove prior possession *de facto* and undue deprivation thereof.

In this case, both parties assert prior and exclusive physical possession in the concept of owner[12] acquired through succession[13] from the same decedent, their aunt and grand aunt, respectively, Petra. In turn, Petra inherited the property from her father Genaro, in whose name the subject property is still registered.

Teodoro Teodoro's assertion of physical possession comprises mainly of his claimed ownership of the subject property acquired through testate succession, or *via* the holographic will of Petra.[14] Teodoro Teodoro then points, as an exercise of his ownership and incident of his physical possession of the subject property, to his act of demolition of the ancestral house.

On the other hand, respondents assert possession likewise by virtue of ownership manifested in their residence at Lot No. 2476 spanning more than five (5) decades, reckoned even from the time Maria, respondents' grandmother and sister of Petra, was alive and resided thereat.[15] Respondents trace their possession from the extrajudicial partition of the commingled

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[12] See Civil Code, Article 525. - The possession of things or rights may be had in one of two concepts: either in the concept of owner, or in that of the holder of the thing or right to keep or enjoy it, the ownership pertaining to another person.

[13] See Civil Code, Article 712. - Ownership is acquired by occupation and by intellectual creation.

Ownership and other real rights over property are acquired and transmitted by law, by donation, **by testate and intestate succession**, and in consequence of certain contracts, by tradition.

They may also be acquired by means of prescription. (Emphasis supplied).

[14] CA *rollo*, pp. 76-78.

[15] See paragraphs 5 and 6 of the Complaint. *Id.* at 63.

properties of the siblings Maria, respondents' direct ascendant, Petra and Mariano, father of Teodoro Teodoro, progeny and heirs of Genaro.[16] According to respondents, from the partition, the heirs of all three Genaro children possessed and occupied their respective shares: respondents received Lot No. 2476 which encompasses herein subject property, while Teodoro Teodoro and his siblings received a different property, "a 667 residential lot at Bambang, Bulacan, Bulacan."

Also, respondents aver that, through respondent Rosario Santiago, they paid for Lot No. 2476's realty taxes. Respondents counter that the subject property was not solely bequeathed to Teodoro Teodoro as it is part of Petra's estate for disposition to her legitimate heirs, including herein respondents. Lastly, on Teodoro Teodoro's claim that he had solely effected the demolition of the ancestral house, respondents contend that they had allowed the demolition upon the understanding that the parties would then completely partition the subject property, as that portion is centrally located in Lot No. 2476 where the respondents actually reside.

Given both parties respective claims of ownership over the subject property *via* succession from their ascendants Maria, Petra and Mariano Teodoro, who are all compulsory heirs of Genaro in whose name the subject property is still registered, the MTC ruled that respondents cannot be disturbed in their possession of the subject property "until and unless the question of ownership over the same [is] finally resolved before the appropriate court."

In contrast, the RTC, without categorically resolving the issue of ownership of Lot No. 2476, ruled that on the portion of Lot No. 2476 where the ancestral house used to stand, Teodoro did establish his prior physical possession over the subject property resulting in his right to institute the ejectment suit against respondents. Significantly, the RTC confirmed respondents' physical possession of, and residency at, Lot No. 2476.

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[16] *Id.*

There would yet be another turn of events. The appellate court, albeit refusing to touch and rule on the issue of ownership, declared that there lacked conclusive evidence of Teodoro Teodoro's prior actual physical possession over the subject property. Thus, the appellate court dismissed Teodoro Teodoro's complaint for lack of merit.

We are now asked for a final ruling.

We grant the petition. We reverse the decision of the Court of Appeals and restore the decision of the RTC on the appeal reversing the MTC.

We affirm the finding of fact by the RTC which is decisive of the issue that has remained unresolved inspite of a summary procedure and two appellate reviews of the forcible entry case filed by Teodoro Teodoro. The RTC said:

> Analyzing the facts of the case, the lower [court] concluded that the subject parcel is a part of the estate of the late Genaro Teodoro **and in the absence of an approved partition among the heirs, remains a community property over which the legal heirs of Genaro Teodoro have the right to inherit. All therefore are entitled to exercise the right of dominion including the right of possession**.[17] (Emphasis supplied).

The RTC's comment that it "disagrees with the said ruling" only meant that "the lower court cannot dispose with finality the issue of ownership" since such ownership issue is "inutile in an ejectment suit except to throw light on the question of possession."[18] And so the RTC ruled that Teodoro Teodoro should be restored in the lawful possession of the disputed area of Lot No. 2476 in light of the finding of the MTC that the subject lot still forms part of the estate of the late Genaro Teodoro. It is from this same fact that the MTC reached the contrary conclusion that Teodoro Teodoro's complaint should be dismissed because he has "failed to prove his ownership."[19]

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[17] *Rollo,* p. 178.

[18] *Id.*

[19] *Id.* at 136.

In the sense that Teodoro Teodoro has not proven exclusive ownership, the MTC was right. But exclusive ownership of Lot No. 2476 or a portion thereof is not in this case required of Teodoro Teodoro for him to be entitled to possession. Co-ownership, the finding of both the MTC at first instance and by the RTC on appeal, is sufficient. The pertinent provisions of the Civil Code state:

> Art. 484. There is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.
>
> Art. 1078. When there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.

Certainly, and as found by the trial courts, the whole of Lot No. 2476 including the portion now litigated is, owing to the fact that it has remained registered in the name of Genaro who is the common ancestor of both parties herein, co-owned property. All, or both Teodoro Teodoro and respondents are entitled to exercise the right of possession as co-owners. Neither party can exclude the other from possession. Although the property remains unpartitioned, the respondents in fact possess specific areas. Teodoro Teodoro can likewise point to a specific area, which is that which was possessed by Petra. Teodoro Teodoro cannot be dispossessed of such area, not only by virtue of Petra's bequeathal in his favor but also because of his own right of possession that comes from his co-ownership of the property. As the RTC concluded, petitioners, as heirs substituting Teodoro Teodoro in this suit, should be restored in the lawful possession of the disputed area.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. SP No. 99805 is **REVERSED** and **SET ASIDE** and the Decision of the Regional Trial Court in Civil Case No. 634-M-06 is **REINSTATED**. No pronouncement as to costs.

SO ORDERED.

Carpio, Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 189833. February 5, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAVIER MORILLA *Y* AVELLANO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; CONSPIRACY; MAY BE INFERRED FROM FACTS AND CIRCUMSTANCES WHICH, TAKEN TOGETHER, INDICATE A COMMON DESIGN; CASE AT BAR.—** A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To determine conspiracy, there must be a common design to commit a felony. x x x In conspiracy, it need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The assent of the minds may be and, from the secrecy of the crime, usually inferred from proof of facts and circumstances which, taken together, indicate that they are parts of some complete whole. In this case, the totality of the factual circumstances leads to a conclusion that Morilla conspired with Mayor Mitra in a common desire to transport the dangerous drugs. Both vehicles loaded with several sacks of dangerous drugs, were on convoy from Quezon to Manila. Mayor Mitra was able to drive through the checkpoint set up by the police operatives. When it was Morilla's turn to pass through the checkpoint, he was requested to open the rear door for a routinary check. Noticing white granules scattered on the floor, the police officers requested Morilla to open the sacks. If indeed he was not involved in conspiracy with Mayor Mitra, he would not have told the police officers that he was with the mayor.

2. **ID.; REPUBLIC ACT NO. 6425 (THE DANGEROUS DRUGS ACT OF 1972); ILLEGAL TRANSPORTATION OF *METHAMPHETAMINE HYDROCHLORIDE*; THE ACT OF TRANSPORTING *METHAMPHETAMINE HYDROCHLORIDE* IS *MALUM PROHIBITUM* AND PROOF OF CRIMINAL INTENT, MOTIVE OR KNOWLEDGE IS NOT REQUIRED.—** Here, Morilla and Mayor Mitra were caught *in*

flagrante delicto in the act of transporting the dangerous drugs on board their vehicles. "Transport" as used under the Dangerous Drugs Act means "to carry or convey from one place to another." It was well established during trial that Morilla was driving the ambulance following the lead of Mayor Mitra, who was driving a Starex van going to Manila. The very act of transporting *methamphetamine hydrochloride* is *malum prohibitum* since it is punished as an offense under a special law. The fact of transportation of the sacks containing dangerous drugs need not be accompanied by proof of criminal intent, motive or knowledge.

3. **ID.; ID.; ID.; PENALTY; PRINCIPLE OF RETROACTIVE APPLICATION OF LIGHTER PENALTY, APPLIED IN CASE AT BAR.—** Originally, under Section 15 of Republic Act No. 6425, the penalty for illegal transportation of *methamphetamine hydrochloride* was imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos. Pursuant to Presidential Decree No. 1683, the penalty was amended to life imprisonment to death and a fine ranging from twenty to thirty thousand pesos. The penalty was further amended in Republic Act No. 7659, where the penalty was changed to *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos. From the foregoing, we sustain the imposed penalty of fine of ₱10,000,00.00 to be paid by each of the accused but amend the penalty to *reclusion perpetua* following the provisions of Republic Act No. 7659 and the principle of retroactive application of lighter penalty. *Reclusion perpetua* entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon. It also carries with it accessory penalties, namely: perpetual special disqualification, *etc*. Life imprisonment, on the other hand, does not appear to have any definite extent or duration and carries no accessory penalties.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

Before us is an appeal filed by accused-appellant Javier Morilla *y* Avellano (Morilla) from the Decision[1] of the Court of Appeals which affirmed his conviction and that of his co-accused Ronnie Mitra *y* Tena (Mayor Mitra) by the trial court, sentencing them[2] to suffer the penalty of life imprisonment and to pay a fine of ₱10,000,000.00 each.

The Regional Trial Court Judgment

On 15 October 2001, Morilla, Mayor Mitra, Willie Yang *y* Yao (Yang) and Ruel Dequilla *y* Regodan (Dequilla) were charged in a criminal information as follows:

> That on or about October 13, 2001, in Barangay Kiloloran, Municipality of Real, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, one of them an incumbent mayor of the Municipality of Panukulan, Quezon Province, who all belong to an organized/syndicate crime group as they all help one another, for purposes of gain in the transport of illegal drugs, and in fact, conspiring and confederating together and mutually aiding and abetting one another, did then and there wilfully, unlawfully, and feloniously transport by means of two (2) motor vehicles, namely a Starex van bearing plate number RWT-888 with commemorative plate to read "Mayor" and a municipal ambulance of Panukulan, Quezon Province, methamphetamine hydrochloride, a regulated drug which is commonly known as *shabu*, and with an approximate weight of five hundred three point sixty eight (503.68) kilos, without authority whatsoever.[3]

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[1] Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Rosmari D. Carandang and Ramon M. Bato, Jr., concurring. *Rollo*, pp. 2-24.

[2] From the Records of the case, no appeal was timely made by the other accused, Mayor Mitra.

[3] Records, Vol. I, p. 2.

After trial, the Regional Trial Court of Quezon City[4] on 1 August 2007 convicted Morilla and his co-accused Mayor Mitra, then incumbent Mayor of Panukulan, Quezon, of illegal transport[5] of *methamphetamine hydrochloride*, commonly known as *shabu*, with an approximate weight of five hundred three point sixty eight (503.68) kilos. However, it absolved Dequilla and Yang due to the prosecution's failure to present sufficient evidence to convict them of the offense charged. The dispositive of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused Ronnie Mitra *y* Tena and Javier Morilla *y* Avellana GUILTY beyond reasonable doubt of the offense charged. Accordingly, both accused are hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱10,000,000.00 each. Accused Willie Yang *y* Yao and Ruel Dequilla *y* Regodan are hereby ACQUITTED for failure of the prosecution to prove their guilt beyond reasonable doubt and are ordered immediately released from custody unless held for some other lawful cause.
>
> The methamphetamine hydrochloride ordered retained by the Court as representative sample which is still in the custody of the PNP Crime Laboratory is ordered turned over to the Philippine Drug Enforcement Agency for proper disposition.[6]

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[4] In a Letter dated 23 October 2001, Chief State Prosecutor Jovencito R. Zuño of the Department of Justice requested then Chief Justice Hilario G. Davide, through Court Administrator (now Associate Justice of this Court) Presbitero J. Velasco, Jr. for a transfer of venue of the case from Real, Quezon to any Regional Trial Court in Metro Manila, preferably in Quezon City, due to the large quantity of the confiscated drugs and difficulty on the part of the Government to prosecute the case in Quezon from Metro Manila. (Records, pp. 49-50). The said request was granted by this Court in a Resolution dated 6 March 2002. (*Id.* at 97).

[5] Republic Act No. 6425 or The Dangerous Drugs Act of 1972. — Art. III, Section 15. *Sale, Administration, Dispension, Delivery, Transportation and Distribution of Regulated Drugs*. The penalty of imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug. In case of a practitioner, the maximum of the penalty herein prescribed and the additional penalty of the revocation of his license to practice his profession shall be imposed.

[6] CA *rollo*, pp. 66-67.

The trial court found valid the search conducted by police officers on the vehicles driven by Mayor Mitra and Morilla, one with control number 888 and the other an ambulance with plate number SFK-372, as the police officers have already acquired prior knowledge that the said vehicles were suspected to be used for transportation of dangerous drugs. During the checkpoint in Real, Quezon, the information turned out to be accurate and indeed, the two accused had in their motor vehicles more than five hundred kilos of *methamphetamine hydrochloride*.[7]

The trial court dismissed the arguments of Mayor Mitra that he was without any knowledge of the contents of the sacks and that he was merely requested to transport them to Manila on board his Starex van. He explained that he only accommodated the request of a certain Ben Tan because the latter bought his fishing boat. It likewise dismissed the defense of ambulance driver Morilla of lack of knowledge of the illegality of the contents. Morilla insisted that he thought that he was just transporting wooden tiles and electronic spare parts together with Dequilla. The other passenger of the ambulance, Yang, in his defense, did not bother to inquire about the contents of the vehicle as he was merely an accommodated passenger of the ambulance.

The court rejected the defenses presented by Morilla and Mayor Mitra as they were caught *in flagrante delicto* of transporting dangerous drugs in two vehicles driven by each of them. Absent any convincing circumstance to corroborate their explanations, the validity of their apprehension was sustained.[8]

The ruling of conspiracy between Mayor Mitra and Morilla was based on the testimonies of the four accused themselves. It was found by the trial court that the two vehicles, the Starex van driven by Mayor Mitra and the ambulance van driven by Morilla, left Infanta, Quezon en route to Manila. The Starex van which was ahead of the ambulance was able to pass the

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[7] *Id.* at 57.

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

checkpoint set up by the police officers. However, the ambulance driven by Morilla was stopped by police officers. Through the untinted window, one of the police officers noticed several sacks inside the van. Upon inquiry of the contents, Morilla replied that the sacks contained narra wooden tiles. Unconvinced, the police officers requested Morilla to open the rear door of the car for further inspection. When it was opened, the operatives noticed that white crystalline granules were scattered on the floor, prompting them to request Morilla to open the sacks. At this moment, Morilla told the police officers that he was with Mayor Mitra in an attempt to persuade them to let him pass.[9] His request was rejected by the police officers and upon inspection, the contents of the sacks turned out to be sacks of *methamphetamine hydrochloride*.[10] This discovery prompted the operatives to chase the Starex van of Mayor Mitra. The police officers were able to overtake the van and Mayor Mitra was asked to stop. They then inquired if the mayor knew Morilla. On plain view, the operatives noticed that his van was also loaded with sacks like the ones found in the ambulance. Thus, Mayor Mitra was also requested to open the door of the vehicle for inspection. At this instance, Mayor Mitra offered to settle the matter but the same was rejected. Upon examination, the contents of the sacks were likewise found to contain sacks of *methamphetamine hydrochloride*.[11]

The two other accused in this case, Dequilla and Yang, were acquitted by the trial court for failure on the part of the prosecution to establish their guilt beyond reasonable doubt. The court ruled that Dequilla's and Yang's mere presence inside the vehicle as passengers was inadequate to prove that they were also conspirators of Mayor Mitra and Morilla.[12]

The Court of Appeals Decision

On 13 July 2009, the appellate court affirmed the ruling of

[9] *Id.* at 63-65.

[10] *Id.* at 46-47.

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

[12] *Id.* at 65.

the trial court. It upheld the finding of conspiracy between Mayor Mitra and Morilla in their common intent to transport several sacks containing *methamphetamine hydrochloride* on board their respective vehicles. The singularity of their intent to illegally transport *methamphetamine hydrochloride* was readily shown when Morilla agreed to drive the ambulance van from Infanta, Quezon to Manila together with Mayor Mitra, who drove the lead vehicle, the Starex van.[13]

The appellate court likewise dismissed the argument of lack of knowledge of the illegal contents of the sacks. The claim that the sacks were loaded with wooden tiles was implausible due to the obvious disparity of texture and volume.[14]

Court's Ruling

We affirm the ruling but modify the penalty imposed.

In his supplemental brief, Morilla raised the issues: (1) whether he may be convicted for conspiracy to commit the offense charged sans allegation of conspiracy in the Information, and (2) whether the prosecution was able to prove his culpability as alleged in the Information.[15]

We dismiss his arguments.

Morilla primarily cites the provision on Sec. 1(b), Rule 115 of the Rules on Criminal Procedure[16] to substantiate his argument that he should have been informed first of the nature and cause of the accusation against him. He pointed out that the Information itself failed to state the word conspiracy but instead, the statement "the above-named accused, one of them an incumbent mayor of the Municipality of Panukulan, Quezon Province, who all belong to an organized/syndicated crime group as they all help one another, did then and there wilfully, unlawfully and feloniously

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[13] *Rollo,* pp. 21-22.

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

[15] Supplemental Brief. *Id.* at 52-53.

[16] Rule 115, Section 1(b). —To be informed of the nature and cause of the accusation against him.

transport x x x." He argued that conspiracy was only inferred from the words used in the Information.[17]

Even assuming that his assertion is correct, the issue of defect in the information, at this point, is deemed to have been waived due to Morilla's failure to assert it as a ground in a motion to quash before entering his plea.[18]

Further, it must be noted that accused Morilla participated and presented his defenses to contradict the allegation of conspiracy before the trial and appellate courts. His failure or neglect to assert a right within a reasonable time warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[19]

The finding of conspiracy by both courts is correct.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[20] To determine conspiracy, there must be a common design to commit a felony.[21]

Morilla argues that the mere act of driving the ambulance on the date he was apprehended is not sufficient to prove that he was part of a syndicated group involved in the illegal transportation of dangerous drugs.

This argument is misplaced.

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[17] Supplemental Brief. *Rollo,* pp. 53-54.

[18] Revised Rules of Criminal Procedure, Rule 117, Section 9 stating that:

Failure to move to quash or to allege any ground therefor. — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

[19] *Figueroa v. People*, 580 Phil. 58, 73-74 (2008).

[20] Revised Penal Code, Article 8.

[21] *Ho Wai Pang v. People*, G.R. No. 176229, 19 October 2011, 659 SCRA 624, 637 citing *People v. Miranda*, G.R. No. 92369, 10 August 1994, 235 SCRA 202, 214.

In conspiracy, it need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The assent of the minds may be and, from the secrecy of the crime, usually inferred from proof of facts and circumstances which, taken together, indicate that they are parts of some complete whole.[22] In this case, the totality of the factual circumstances leads to a conclusion that Morilla conspired with Mayor Mitra in a common desire to transport the dangerous drugs. Both vehicles loaded with several sacks of dangerous drugs, were on convoy from Quezon to Manila. Mayor Mitra was able to drive through the checkpoint set up by the police operatives. When it was Morilla's turn to pass through the checkpoint, he was requested to open the rear door for a routinary check. Noticing white granules scattered on the floor, the police officers requested Morilla to open the sacks. If indeed he was not involved in conspiracy with Mayor Mitra, he would not have told the police officers that he was with the mayor.

His insistence that he was without any knowledge of the contents of the sacks and he just obeyed the instruction of his immediate superior Mayor Mitra in driving the said vehicle likewise bears no merit.

Here, Morilla and Mayor Mitra were caught *in flagrante delicto* in the act of transporting the dangerous drugs on board their vehicles. "Transport" as used under the Dangerous Drugs Act means "to carry or convey from one place to another."[23] It was well established during trial that Morilla was driving the ambulance following the lead of Mayor Mitra, who was driving a Starex van going to Manila. The very act of transporting *methamphetamine hydrochloride* is *malum prohibitum* since it is punished as an offense under a special law. The fact of transportation of the sacks containing dangerous drugs need not be accompanied by proof of criminal intent, motive or knowledge.[24]

[22] *Id.* citing *People v. Ponce*, 395 Phil. 563, 572 (2000); *People v. Mateo, Jr.*, 258-A Phil. 886, 904 (1989).

[23] *People v. Baludda*, 376 Phil. 614, 626 (1999).

[24] *People v. Del Mundo*, 418 Phil. 740, 754-755 (2001).

In a similar case of *People v. Libnao*,[25] this Court upheld the conviction for illegal transportation of *marijuana* of Libnao and Nunga, who were caught carrying a bag full of *marijuana* leaves when they were flagged down on board a passing tricycle at a checkpoint.

However, we modify the penalty imposed by the trial court as affirmed by the Court of Appeals.

Originally, under Section 15 of Republic Act No. 6425,[26] the penalty for illegal transportation of *methamphetamine hydrochloride* was imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos. Pursuant to Presidential Decree No. 1683,[27] the penalty was amended to life imprisonment to death and a fine ranging from twenty to thirty thousand pesos. The penalty was further amended in Republic Act No. 7659,[28] where the penalty was changed to *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos.

From the foregoing, we sustain the imposed penalty of fine of ₱10,000,00.00 to be paid by each of the accused but amend

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[25] 443 Phil. 506 (2003).

[26] *Supra* note 5.

[27] Presidential Decree No. 1683. —Amending Certain Sections of Republic Act No. 6425, As Amended, Otherwise Known as the Dangerous Drugs Act of 1972 and for Other Purposes.

SECTION 5. Section 15 of the same Act is hereby amended to read as follows:

Section 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs*. — The penalty of life imprisonment to death and a fine ranging from twenty to thirty thousand pesos shall be imposed upon any persons who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug. If the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

[28] An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Laws, As Amended, Other Special Penal Laws, And For Other Purposes.

the penalty to *reclusion perpetua* following the provisions of Republic Act No. 7659 and the principle of retroactive application of lighter penalty. *Reclusion perpetua* entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon. It also carries with it accessory penalties, namely: perpetual special disqualification, *etc.* Life imprisonment, on the other hand, does not appear to have any definite extent or duration and carries no accessory penalties.[29]

The full particulars are in *Ho Wai Pang v. People*,[30] thus:

As to the penalties imposed by the trial court and as affirmed by the appellate court, we find the same in accord with law and jurisprudence. It should be recalled that at the time of the commission of the crime on September 6, 1991, Section 15 of R.A. No. 6425 was already amended by Presidential Decree No. 1683. The decree provided that for violation of said Section 15, the penalty of life imprisonment to death and a fine ranging from ₱20,000.00 to ₱30,000.00 shall be imposed. Subsequently, however, R.A. No. 7659 further introduced new amendments to Section 15, Article III and Section 20, Article IV of R.A. No. 6425, as amended. Under the new amendments, the penalty prescribed in Section 15 was changed from "life imprisonment to death and a fine ranging from ₱20,000.00 to ₱30,000.00" to "*reclusion perpetua* to death and a fine ranging from ₱500,000.00 to ₱10 million."

Section 14. Sections 14, 14-A, and 15 of Article III of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, are hereby amended to read as follows:

x x x x x x x x x

Section 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.* - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

[29] Supreme Court Administrative Circular No. 6-A-92, 21 June 1993 *Re: The Correct Application of the Penalties of Reclusion Perpetua and Life Imprisonment*; *Potenciano v. Reynoso*, 449 Phil. 396, 409 (2003).

[30] *Supra* note 21.

On the other hand, Section 17 of R.A. No. 7659 amended Section 20, Article IV of R.A. No. 6425 in that the new penalty provided by the amendatory law shall be applied depending on the quantity of the dangerous drugs involved.

The trial court, in this case, imposed on petitioner the penalty of *reclusion perpetua* under R.A. No. 7659 rather than life imprisonment ratiocinating that R.A. No. 7659 could be given retroactive application, it being more favorable to the petitioner in view of its having a less stricter punishment.

We agree. In *People v. Doroja*, we held:

> "In *People v. Martin Simon* (G.R. No. 93028, 29 July 1994) this Court ruled (a) that the amendatory law, being more lenient and favorable to the accused than the original provisions of the Dangerous Drugs Act, should be accorded retroactive application, x x x."

And, since "*reclusion perpetua* is a lighter penalty than life imprisonment, and considering the rule that criminal statutes with a favorable effect to the accused, have, as to him, a retroactive effect," the penalty imposed by the trial court upon petitioner is proper. Consequently, the Court sustains the penalty of imprisonment, which is *reclusion perpetua*, as well as the amount of fine imposed by the trial court upon petitioner, the same being more favorable to him.[31]

WHEREFORE, premises considered, the petition is **DENIED** and the assailed 13 July 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. 02967 is **AFFIRMED WITH MODIFICATION** with respect to the penalty to be imposed as *Reclusion Perpetua* instead of Life Imprisonment and payment of fine of ₱10,000,000.00 by each of the accused.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

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[31] *Id.* at 640-641.

THIRD DIVISION

[G.R. No. 193592. February 5, 2014]

PASIG PRINTING CORPORATION, *petitioner, vs.* **ROCKLAND CONSTRUCTION COMPANY, INC.,** *respondent.*

[G.R. No. 193610. February 5, 2014]

REPUBLIC OF THE PHILIPPINES, represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) and MID-PASIG LAND DEVELOPMENT CORPORATION (MPLDC), *petitioner, vs.* **ROCKLAND CONSTRUCTION COMPANY, INC.,** *respondent.*

[G.R. No. 193686. February 5, 2014]

MID-PASIG LAND DEVELOPMENT CORPORATION, (MPLDC), *petitioner, vs.* **ROCKLAND CONSTRUCTION COMPANY, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; THE COURT CAN DECIDE THE CASE ON THE MERITS DESPITE THE MAIN CASE HAVING BEEN DECLARED CLOSED OR TERMINATED FOR BEING MOOT AND ACADEMIC IN VIEW OF THE PECULIAR CIRCUMSTANCES; CASE AT BAR.— The rule is that: "It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition." At the time the CA issued its assailed May 11, 2010

decision, the Court had already pronounced in *Tablante* the end of Rockland's claim over the subject property because of the expiration of its lease. By that very fact, Rockland has no more possessory right over it. Granting that the CA was not aware of *Tablante,* nonetheless, it had no factual or legal basis in ordering the restoration of the possession of the subject property to Rockland. It was very clear in the records that the original lease contract entered into by and between MPLDC and ECRM, the predecessor in interest of Rockland, had long expired in 2003. In view of the foregoing, the Court has no recourse but to grant the motions. While the main case has been declared closed and terminated for being moot and academic, the Court can decide the case on the merits in view of the peculiar circumstances. Not to reverse and set aside the May 11, 2010 Decision and the August 27, 2010 Resolution of the CA would allow its disposition to remain intact in the records. It would prejudice the movants because it would allow Rockland to claim possession despite the fact that the contract, on which its right was based, has long expired.

APPEARANCES OF COUNSEL

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R E S O L U T I O N

MENDOZA, *J.*:

This resolves the motions for reconsideration filed by (1) Pasig Printing Corporation *(PPC),*[1] and the (2) Republic of the Philippines represented by the Presidential Commission on Good Government *(PCGG)* and Mid-Pasig Land Development

[1] *Rollo* (G.R. No. 193592), p. 311.

Corporation *(MPLDC)*,[2] collectively referred herein as movants, seeking reconsideration and/or clarification of the February 2, 2011 Resolution[3] rendered by this Court in G.R. No. 193592 and G.R. No. 193610, dismissing the petitions for being moot and academic; and in G.R. No. 193686, declaring it closed and terminated as no petition had been filed within the requested extension time.

In the February 2, 2011 Resolution, the Court dismissed the movants' petition for review on *certiorari*, which assailed the May 11, 2010 Decision and the August 27, 2010 Resolution *(collectively, issuances)* of the Court of Appeals *(CA)* in CA-G.R. SP No. 101202, in light of its ruling in *Mid-Pasig Land Development Corporation v. Mario Tablante, et al.*[4] *(Tablante)*. The CA held that the issue of possession over the Payanig property or Home Depot property *(subject property)* had become moot and academic considering the expiration of the 3-year extended period of the contract of lease between MPLDC and Rockland Construction Company *(Rockland)*.

The crux of this controversy is the issue of possession covering the subject property registered in the name of MPLDC. This had been the subject of three cases filed with the trial courts.

It all started when MPLDC leased the subject property to ECRM Enterprises *(ECRM)*. Subsequently, ECRM assigned all its rights in the contract of lease including the option to renew to Rockland. Later, Rockland erected a building on the area and subleased certain portions to MC Home Depot. In December of 2000, MPLDC demanded that Rockland vacate the property.

To pre-empt any action by MPLDC, on January 11, 2001, Rockland filed the *first* of the three cases – a civil case for specific performance docketed as Civil Case No. 68213, asking

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[2] *Id.* at 299.

[3] *Id.* at 297.

[4] G.R. No. 162924, February 4, 2010, 611 SCRA 528.

MPLDC to execute a 3-year extended contract of lease in its favor.

To protect its interest, on August 22, 2001, MPLDC filed the *second* case, an unlawful detainer case, before the Metropolitan Trial Court of Pasig City *(MeTC),* where it was docketed as Civil Case No. 8788.

The specific performance case (Civil Case No. 68213) reached its way to the Court when MPLDC filed a petition questioning the CA affirmation of the RTC's denial of its motion to dismiss on account of the subsequent filing of the unlawful detainer case (Civil Case No. 8788) with the MeTC. Before the Court could rule on the merits of the petition with regard to the specific performance case, the separate unlawful detainer case was dismissed by the MeTC on April 29, 2002, reasoning out that the issue sought to be resolved was not one of possession, but an exercise of the option to renew a contract cognizable by the RTC.

On October 8, 2003, the Court granted MPLDC's petition, stating, among others, that the issues in the specific performance case should be addressed in the unlawful detainer proceedings before the MeTC, thus, the specific performance case was dismissed.

At this point, the CA decision in the unlawful detainer case was elevated to the Court as G.R No. 162924, entitled *Mid-Pasig Land Development Corporation v. Mario Tablante (Tablante).*

On February 4, 2010, in *Tablante*, the Court declared that a remand to the MeTC for the unlawful detainer case would have been proper if not for the circumstances which rendered the issue of possession moot and academic. Hence, the Court declared the case as closed and terminated. The Court disposed:

WHEREFORE, the petition is **GRANTED**. The assailed Resolution of the Court of Appeals are **REVERSED** and **SET ASIDE**. However, in view of the developments which have rendered the issue of the

right of possession over the subject property moot and academic, the main case is hereby considered **CLOSED AND TERMINATED**.

No pronouncement as to costs.

SO ORDERED.[5]

Despite its mootness as held in *Tablante*, the issue of possession again surfaced in the *third* case, an indirect contempt case pending before the RTC docketed as SCA Case No. 2673. This was filed against MPLDC for its refusal to reconnect the electric supply in the subject property. On September 17, 2004, this case was dismissed. The RTC, however, awarded the possession to MPLDC with Rockland being ordered to refrain from exercising any possessory rights over the same.

On October 12, 2004, PPC moved to intervene in SCA Case No. 2673, claiming interest over the property based on an alleged option to lease granted to it by MPLDC on March 1, 2004.

On November 12, 2004, the RTC issued the Omnibus Order denying Rockland's motion for reconsideration on the dismissal of the indirect contempt case, granting PPC's motion to intervene, and ordering the immediate implementation of the September 17, 2004 Resolution. As ordered by the RTC:

WHEREFORE, premises considered, the Motion for Reconsideration, dated September 27, 2004, is denied and the dispositive portion of this Court's Resolution, dated September 17, 2004, is hereby reiterated and re-affirmed.

Moreover, the instant Urgent Motion to Intervene, filed by Intervenor Pasig Printing Corporation, is hereby granted. Likewise, the prayer for immediate execution of the Resolution of this Court, dated September 17, 2004, is also hereby granted.

Consequently, pursuant to the Intervenor's prayer, the Court's Sheriff is hereby directed to implement forthwith the subject Resolution, dated September 17, 2004, employing reasonable force, if necessary, including the padlocking of the MC Home Depot premises, located at Ortigas Avenue corner Meralco Avenue, Pasig City, Metro Manila

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[5] *Rollo* (G.R. No. 193592), pp. 254-255.

and make the corresponding return thereon immediately. Let the Clerk of Court issue the corresponding Writ of Execution for the implementation of the subject Resolution dated September 17, 2004.

SO ORDERED.[6]

On November 16, 2004, the above resolution was implemented by the Sheriff, thus, possession of the subject property was turned over to PPC on the basis of the option to lease agreement with MPLDC.

On appeal, the CA affirmed, in its Decision,[7] dated *January 25, 2005*, the dismissal of the indirect contempt case, but annulled the award of possession to MPLDC. The dispositive portion of the said decision reads:

WHEREFORE, the assailed Resolution dated September 17, 2004 and the Omnibus Order dated November 12, 2004 are hereby partially **AFFIRMED**, that is, ***only*** insofar as they dismissed the charge for indirect contempt against Mid-Pasig Land Development Corporation, Ernesto R. Jalandoni, Manila Electric Company and Alfonso Y. Lacap. The same Resolution and Omnibus Order are **ANNULLED and SET ASIDE** in all other respects, specifically insofar as they 1) declared Mid-Pasig as the rightful possessor of the subject property; 2) ordered Rockland to refrain from exercising any possessory right over the same; and 3) granted Pasig Printing Corporation's Motion to Intervene and for Immediate Execution. Accordingly, the Writ of Execution issued on November 16, 2004, by virtue of which the possession of the subject property was turned over to private respondent Pasig Printing Corporation, is likewise **NULLIFIED and SET ASIDE**.

No pronouncement as to costs.

SO ORDERED.[8]

Again, the above decision of the CA reached the Court. In its resolution on the petition, dated August 31, 2005, and in

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[6] As cited by the CA in its January 25, 2005 Decision, *rollo* (G.R. No. 193592), p. 134.

[7] *Rollo* (G.R. No. 193592), p. 121.

[8] *Id.* at 146-147.

another resolution on the motion for reconsideration, dated December 7, 2005, the CA's ruling was affirmed.

Believing that the affirmation awarded the possession of the property to it, Rockland sought restoration in the possession of the subject. In the course of the execution proceedings, the trial court issued flip-flopping orders, the last *(August 10, 2007 RTC Order)*[9] of which awarded the possession to PPC.

In its *May 11, 2010* Decision[10] involving a petition questioning the August 10, 2007 RTC order, the CA ruled that the order, dated March 29, 2007, directing movants to restore Rockland in the possession of the property be reinstated, to wit:

> **ACCORDINGLY**, the petition is GRANTED. The Order dated August 10, 2007 is NULLIFIED and SET ASIDE, and the Order dated March 29, 2007 REINSTATED. Respondent Judge is directed to immediately implement the Order dated March 29, 2007, without any further delay. Costs against Mid-Pasig Land Development Corporation and Pasig Printing Corporation.[11]

With movants' motion for reconsideration denied by the CA on August 27, 2010, petitions for *certiorari* under Rule 45 were filed before this Court.

On February 2, 2011, the Court dismissed the petitions reiterating its pronouncement in *Tablante* that the issue of possession and other related issues had become moot and academic.

Hence, this motion for reconsideration seeking clarification and/or reconsideration of the Court's February 2, 2011 Resolution dismissing the cases.

Disposition of the Motions

The Court finds merit in the motions.

After a thorough review of the records, the Court agrees

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[9] *Id.* at 224.

[10] *Id.* at 36.

[11] *Id.* at 48.

with the movants in their submission that the dismissal of the petitions would affirm an erroneous ruling which effectively restored the possession of the subject property to Rockland despite the expiration of its contract of lease.

Prior to the issuance of the assailed *May 11, 2010* CA Decision, however, the Court, on February 4, 2010, came out with its decision in *Tablante,* where it was written:

> Petitioner [Mid-Pasig Land Development Corporation], in its Memorandum dated October 28, 2005, alleged that respondents' possessory claims had lapsed and, therefore, had become moot and academic. Respondent Rockland prayed that a three year-period be granted to it in order that it would be able to plan its activities more efficiently. Since the claimed "lease contract" had already expired as of July or August 2003, there appears no reason why respondents should continue to have any claim to further possession of the property.
>
> Respondent Rockland also stated in its Memorandum dated March 16, 2006 that it was no longer in possession of the subject property considering that:
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> > 50. In a Resolution dated 17 September 2004, in the case of "Rockland Construction Company, Inc. v. Mid-Pasig Land Development Corporation, *et. al.*, docketed as SCA No. 2673 and the Omnibus Order dated 12 November 2004, affirming the aforesaid Resolution, Branch 67 Pasig City Regional Trial Court Presiding Judge Mariano M. Singzon awarded possession (albeit erroneously) of subject property to Pasig Printing Corporation, an intervenor in the SCA case.
> >
> > 51. At present, petitioner does not have a cause of action against herein respondent Rockland. Respondent is not unlawfully withholding possession of the property in question as in fact respondent is not in possession of the subject property. The issue of possession in this ejectment case has therefore been rendered moot and academic.
>
> This allegation was confirmed by respondent MC Home Depot, in its Comment/Memorandum dated May 22, 2007 submitted to the Court. **It stated therein that "the passage of time has rendered the issue of possession moot and academic with respect to respondent Rockland, as the three-year period has long been expired in 2003.**

Furthermore, respondent MC Home Depot, Inc. asserts that it is in the rightful possession of the land on the strength of a Memorandum of Agreement dated November 22, 2004 between the latter and Pasig Printing Corporation. By petitioner's admission that while it remains the registered owner of the land, possession of the same had been adjudicated in favour of Pasig Printing Corporation, another entity without any contractual relationship with petitioner, on the strength of an Order from the RTC of Pasig City. Considering that Pasig Printing Corporation has the *jus possessionis* over the subject property, it granted the MC Home Depot, Inc. actual occupation and possession of the subject property for a period of four (4) years, renewable for another four (4) years upon mutual agreement of the parties.

WHEREFORE, the petition is **GRANTED**. The assailed Resolution of the Court of Appeals are **REVERSED** and **SET ASIDE**. However, in view of the developments which have rendered the issue of the right of possession over the subject property moot and academic, the main case is hereby considered **CLOSED AND TERMINATED**.

No pronouncement as to costs.

SO ORDERED.

Although the above decision considered the "main case" or the issue of possession as moot and academic, as can be gleaned therefrom, the Court granted the petition and reversed the CA. In the process, the Court adjudicated on Rockland's right to possess the subject property. The Court clearly stated that the said right was *already extinguished by virtue of the expiration of Rockland's leasehold rights way back in 2003.*

Thus, the movants, in filing their motions, seek the Court's guidance in determining whether the CA erred in not taking into consideration the mootness of Rockland's claim when it issued an order commanding the restoration of the property to the latter.

The movants submit that by virtue of the Court's ruling in *Tablante,* which already attained finality, the CA has erred in declaring that Rockland still has the right to possess the subject property.

The Court agrees.

The CA erred in ordering the restoration of the possession to Rockland. The rule is that:

> It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition. [12]

At the time the CA issued its assailed May 11, 2010 decision, the Court had already pronounced in *Tablante* the end of Rockland's claim over the subject property because of the expiration of its lease. By that very fact, Rockland has no more possessory right over it.

Granting that the CA was not aware of *Tablante*, nonetheless, it had no factual or legal basis in ordering the restoration of the possession of the subject property to Rockland. It was very clear in the records that the original lease contract entered into by and between MPLDC and ECRM, the predecessor in interest of Rockland, had long expired in 2003.

In view of the foregoing, the Court has no recourse but to grant the motions. While the main case has been declared closed and terminated for being moot and academic, the Court can decide the case on the merits in view of the peculiar circumstances.[13] Not to reverse and set aside the May 11, 2010 Decision and the August 27, 2010 Resolution of the CA would allow its disposition to remain intact in the records. It would prejudice the movants because it would allow Rockland to claim possession despite the fact that the contract, on which its right was based, has long expired.

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[12] *Philippine Long Distance Telephone Company v. Eastern Telecommunications Philippines Inc.*, G.R. No. 163037, February 6, 2013, 690 SCRA 1.

[13] *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006).

WHEREFORE, the motions for reconsideration are **GRANTED.** Accordingly, the petitions are **GRANTED**. The May 11, 2010 Decision and the August 27, 2010 Resolution of the Court of Appeals are hereby **ANNULLED and SET ASIDE**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 194105. February 5, 2014]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **TEAM SUAL CORPORATION (formerly MIRANT SUAL CORPORATION),** *respondent.*

SYLLABUS

1. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE; REFUNDS OR TAX CREDITS OF UNUTILIZED INPUT VALUE-ADDED TAX; RULES.— [Subsections (A) and (C) of] Section 112 of the NIRC provides for the rules to be followed in claiming a refund/tax credit of unutilized input VAT. x x x Any unutilized input VAT attributable to zero-rated or effectively zero-rated sales may be claimed as a refund/tax credit. Initially, claims for refund/tax credit for unutilized input VAT should be filed with the BIR, together with the complete documents in support of the claim. Pursuant to Section 112(A) of the NIRC, the administrative claim for refund/tax credit must be filed with the BIR within two years after the close of the taxable quarter when the sales were made. Under Section 112(C) of the NIRC, the CIR is given 120 days from the submission of complete documents in support of the application for refund/tax credit

within which to either grant or deny the claim. In case of (1) full or partial denial of the claim or (2) the failure of the CIR to act on the claim within 120 days from the submission of complete documents, the taxpayer-claimant may, within 30 days from receipt of the CIR decision denying the claim or after the lapse of the 120-day period, file a petition for review with the CTA.

2. ID.; ID.; ID.; THE 120-DAY PERIOD GIVEN TO THE COMMISSIONER OF INTERNAL REVENUE WITHIN WHICH TO DECIDE CLAIMS FOR REFUND/TAX CREDIT IS MANDATORY AND JURISDICTIONAL.— [I]n *Commissioner of Internal Revenue v. San Roque Power Corporation*, the Court emphasized that the 120-day period that is given to the CIR within which to decide claims for refund/tax credit of unutilized input VAT is **mandatory** and **jurisdictional**. The Court categorically held that the taxpayer-claimant must wait for the 120-day period to lapse, should there be no decision fully or partially denying the claim, before a petition for review may be filed with the CTA. Otherwise, the petition would be rendered premature and without a cause of action. Consequently, the **CTA does not have the jurisdiction to take cognizance of a petition for review filed by the taxpayer-claimant should there be no decision by the CIR on the claim for refund/tax credit or the 120-day period had not yet lapsed**. x x x That the two-year prescriptive period within which to file a claim for refund/tax credit of unutilized input VAT under Section 112(A) of the NIRC is about to lapse is inconsequential and would not justify the immediate filing of a petition for review with the CTA *sans* compliance with the 120-day mandatory period. To stress, under Section 112(C) of the NIRC, a taxpayer-claimant may only file a petition for review with the CTA within 30 days from either: (1) the receipt of the decision of the CIR denying, in full or in part, the claim for refund/tax credit; or (2) the lapse of the 120-day period given to the CIR to decide the claim for refund/tax credit.

3. ID.; ID.; ID.; THE 120-DAY MANDATORY PERIOD AND THE 30-DAY PERIOD WITHIN WHICH THE TAXPAYER-CLAIMANT MAY FILE AN APPEAL WITH THE COURT OF TAX APPEALS NEED NOT FALL WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD FOR FILING A CLAIM FOR REFUND/TAX CREDIT.— The 120-day mandatory period may

extend beyond the two-year prescriptive period for filing a claim for refund/tax credit under Section 112(A) of the NIRC. Consequently, the 30-day period given to the taxpayer-claimant likewise need not fall under the two-year prescriptive period. What matters is that the administrative claim for refund/tax credit of unutilized input VAT is filed with the BIR within the two-year prescriptive period.

4. ID.; ID.; ID.; FAILURE TO COMPLY WITH THE 120-DAY MANDATORY PERIOD RENDERS A PETITION FOR REVIEW WITH THE COURT OF TAX APPEALS VOID; CASE AT BAR.— In *San Roque*, the Court opined that a petition for review that is filed with the CTA without waiting for the 120-day mandatory period renders the same void. The Court then pointed out that a person committing a void act cannot claim or acquire any right from such void act. x x x Accordingly, TSC's failure to comply with the 120-day mandatory period under Section 112(C) of the NIRC renders its petition for review with the CTA void. It is a mere scrap of paper from which TSC cannot derive or acquire any right notwithstanding the supposed failure on the part of the CIR to raise the issue of TSC's non-compliance with the 120-day period in the proceedings before the CTA First Division. In any case, the Court finds that the CIR raised the issue of TSC's non-compliance with the 120-days mandatory period in the motion for reconsideration that was filed with the CTA First Division. Further, the CIR likewise raised the same issue in the petition for review that was filed with the CTA *en banc*.

5. ID.; REVENUE MEMORANDUM CIRCULAR NO. 49-03; AUTHORIZED THE BUREAU OF INTERNAL REVENUE TO CONTINUE PROCESSING A CLAIM FOR REFUND/TAX CREDIT NOTWITHSTANDING THAT THE SAME HAD BEEN APPEALED TO THE COURT OF TAX APPEALS.— In *San Roque*, the Court had already clarified that nowhere in RMC No. 49-03 was it stated that a taxpayer-claimant need not wait for the lapse of the 120-day mandatory period before it can file its judicial claim with the CTA. RMC No. 49-03 only authorized the BIR to continue the processing of a claim for refund/tax credit notwithstanding that the same had been appealed to the CTA x x x.

6. ID.; BIR RULING NO. DA-489-03; APPLIES ONLY FROM THE TIME OF ITS ISSUANCE UP TO ITS REVERSAL; CASE AT BAR.— BIR Ruling No. DA-489-03 provided that the taxpayer-claimant may already file a judicial claim for refund/tax credit with the CTA notwithstanding that the 120-day mandatory period under Section 112(C) of the NIRC had not yet lapsed. Being a general interpretative rule, the CIR is barred from questioning the CTA's assumption of jurisdiction on the ground that the 120-day mandatory period under Section 112(C) of the NIRC had not yet lapsed since *estoppel* under Section 246 of the NIRC had already set in. Nevertheless, the Court clarified that taxpayers can only rely on BIR Ruling No. DA-489-03 **from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010**, where it was held that the 120-day period under Section 112(C) of the NIRC is mandatory and jurisdictional. TSC filed its judicial claim for refund/tax credit of its unutilized input VAT with the CTA on April 1, 2002 – more than a year before the issuance of BIR Ruling No. DA-489-03. Accordingly, TSC cannot benefit from the declaration laid down in BIR Ruling No. DA-489-03. As stressed by the Court in *San Roque*, prior to the issuance of BIR Ruling No. DA-489-03, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law.

7. ID.; TAX REFUNDS; MUST BE CONSTRUED *STRICTISSIMI JURIS* AGAINST THE ENTITY CLAIMING THE SAME, BEING IN THE NATURE OF TAX EXEMPTIONS.— "Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same." "The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied **all the statutory and administrative requirements** to be entitled to the tax refund." TSC, in prematurely filing a petition for review with the CTA, failed to comply with the 120-day mandatory period under Section 112(C) of the NIRC. Thus, TSC's claim for refund/tax credit of its unutilized input VAT should be denied.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Follosco Morallos & Herce for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated June 16, 2010 and the Resolution[3] dated October 14, 2010 of the Court of Tax Appeals (CTA) *en banc* in CTA EB No. 504. The CTA *en banc* affirmed the Decision[4] dated January 26, 2009 as well as the Resolution[5] dated June 19, 2009 of the CTA First Division in CTA Case No. 6421. The CTA First Division ordered the Commissioner of Internal Revenue (CIR) to refund or credit to Team Sual Corporation (TSC) its unutilized input value-added tax (VAT) for the taxable year 2000.

The Facts

TSC is a corporation that is principally engaged in the business of power generation and the subsequent sale thereof solely to National Power Corporation (NPC); it is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer.

On November 26, 1999, the CIR granted TSC's application for zero-rating arising from its sale of power generation services to NPC for the taxable year 2000. As a VAT-registered entity, TSC filed its VAT returns for the first, second, third, and

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[1] *Rollo*, pp. 11-35.

[2] Penned by Associate Justice Juanito C. Castaneda, Jr., with Associate Justices Erlinda P. Uy, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla and Amelia R. Cotango-Manalastas, concurring. Associate Justice Lovell R. Bautista penned a Concurring and Dissenting Opinion with Associate Justice Caesar A. Casanova, concurring. Then Presiding Justice Ernesto D. Acosta penned a Dissenting Opinion with Associate Justice Esperanza R. Fabon-Victorino, concurring; *id.* at 38-80.

[3] *Id.* at 82-121.

[4] Penned by Associate Justice Lovell R. Bautista, with Associate Justice Caesar A. Casanova, concurring; then Presiding Justice Ernesto D. Acosta penned a Concurring and Dissenting Opinion; *id.* at 135-156.

[5] *Id.* at 158-168.

fourth quarters of taxable year 2000 on April 24, 2000, July 25, 2000, October 25, 2000, and January 25, 2001, respectively.

On March 11, 2002, TSC filed with the BIR an administrative claim for refund, claiming that it is entitled to the unutilized input VAT in the amount of ₱179,314,926.56 arising from its zero-rated sales to NPC for the taxable year 2000.

On April 1, 2002, without awaiting the CIR's resolution of its administrative claim for refund/tax credit, TSC filed a petition for review with the CTA seeking the refund or the issuance of a tax credit certificate in the amount of ₱179,314,926.56 for its unutilized input VAT for the taxable year 2000. The case was subsequently raffled to the CTA First Division.

In his Answer, the CIR claimed that TSC's claim for refund/tax credit should be denied, asserting that TSC failed to comply with the conditions precedent for claiming refund/tax credit of unutilized input VAT. The CIR pointed out that TSC failed to submit complete documents in support of its application for refund/tax credit contrary to Section 112(C)[6] of the National Internal Revenue Code (NIRC).

On January 26, 2009, the CTA First Division rendered a Decision,[7] which granted TSC's claim for refund/tax credit of input VAT. Nevertheless, the CTA First Division found that, from the total unutilized input VAT of ₱179,314,926.56 that it claimed, TSC was only able to substantiate the amount of ₱173,265,261.30. Thus:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, [CIR] is hereby **ORDERED** to **REFUND** or to **ISSUE TAX CREDIT CERTIFICATE** in favor of [TSC] in the amount of [₱]173,265,261.30.
>
> **SO ORDERED**.[8]

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[6] Section 112 of the National Internal Revenue Code of 1997 was amended by Republic Act No. 9337, which took effect on July 1, 2005; subsection (D) thereof now falls under subsection (C).

[7] *Rollo*, pp. 135-156.

[8] *Id.* at 149.

The CIR sought a reconsideration of the CTA First Division Decision dated January 26, 2009 maintaining that TSC is not entitled to a refund/tax credit of its unutilized input VAT for the taxable year 2000 since it failed to submit all the necessary and relevant documents in support of its administrative claim.

The CIR further claimed that TSC's petition for review was prematurely filed, alleging that under Section 112(C) of the NIRC, the CIR is given 120 days from the submission of complete documents within which to either grant or deny TSC's application for refund/tax credit of its unutilized input VAT. The CIR pointed out that TSC filed its petition for review with the CTA *sans* any decision on its claim and without waiting for the 120-day period to lapse.

On June 19, 2009, the CTA First Division issued a Resolution,[9] which denied the CIR's motion for reconsideration. The CTA First Division opined that TSC's petition for review was not prematurely filed notwithstanding that the 120-day period given to the CIR under Section 112(C) of the NIRC had not yet lapsed. It ruled that, pursuant to Section 112(A) of the NIRC, claims for refund/tax credit of unutilized input VAT should be filed within two years after the close of the taxable quarter when the sales were made; that the 120-day period under Section 112(C) of the NIRC is also covered by the two-year prescriptive period within which to claim the refund/tax credit of unutilized input VAT. Thus:

> Admittedly, Section 112([C]) of the NIRC of 1997 provides for a one hundred twenty (120)-day period from the submission of the complete documents within which respondent may grant or deny the taxpayer's application for refund or issuance of tax credit certificate. The said 120-day period however is also covered by the two-year prescriptive period to file a claim for refund or tax credit before this Court, as specified in Section 112(A) of the same Code.
>
> It has been consistently held that the administrative claim and the subsequent appeal to this Court must be filed within the two-year period. In the case of **Allison J. Gibbs, *et al.* vs. Collector of Internal Revenue, *et al.***, the High Tribunal declared that the suit or

[9] *Id.* at 158-168.

proceeding must be started in this Court before the end of the two-year period without awaiting the decision of the Collector (now Commissioner). Accordingly, as long as an administrative claim is filed prior to the filing of a judicial case, both within the two-year prescriptive period, this Court has jurisdiction to take cognizance of the claim. And once a *Petition for Review* is filed, this Court already acquires jurisdiction over the claim and is not bound to wait indefinitely for whatever action respondent may take. After all, at stake are claims for refund and unlike assessments, no decision of respondent is required before one can go to this Court.[10] (Citations omitted)

Aggrieved by the foregoing disquisition of the CTA First Division, the CIR filed a Petition for Review[11] with the CTA *en banc*. He maintains that TSC's petition with the CTA First Division was prematurely filed; that TSC can only elevate its claim for refund/tax credit of its unutilized input VAT with the CTA only within 30 days from the lapse of the 120-day period granted to the CIR, under Section 112(C) of the NIRC, within which to decide administrative claims for refund/tax credit or from the CIR decision denying its claim.

On June 16, 2010, the CTA *en banc* rendered the herein assailed Decision,[12] which affirmed the Decision dated January 26, 2009 of the CTA First Division, *viz*:

> **WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED**. The Commissioner is hereby ordered to refund TSC the aggregate amount of [₱]173,265,261.30 representing unutilized input VAT on its domestic purchases and importation of goods and services attributable to zero-rated sales to NPC for the taxable year 2000.
>
> **SO ORDERED**.[13]

The CTA *en banc* ruled that, pursuant to Section 112(A) of the NIRC, both the administrative and judicial remedies under

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[10] *Id.* at 159-160.

[11] *Id.* at 122-134.

[12] *Id.* at 38-80.

[13] *Id.* at 61.

Section 112(C) of the NIRC must be undertaken within the two-year period from the close of the taxable quarter when the relevant sales were made. Thus:

> Under the law, the taxpayer-claimant ***may*** seek judicial redress for refund on excess or unutilized input VAT attributable to zero-rated sales or effectively zero-rated sales with the Court of Tax Appeals either within thirty (30) days from receipt of the denial of its claim for refund/tax credit, or after the lapse of the one hundred twenty (120)[-]day period in the event of inaction by the Commissioner; provided that both administrative and judicial remedies must be undertaken within the two (2)[-]year period from the close of the taxable quarter when the relevant sales were made. If the two[-]year period is about to lapse, but the BIR has not yet acted on the application for refund, the taxpayer should file a Petition for Review with this Court within the two[-]year period. Otherwise, the refund claim for unutilized input value added tax attributable to zero-rated sales or effectively zero-rated sales is time-barred.
>
> Subsections (A) and ([C]) of Section 112 of the 1997 NIRC under the heading "Refunds or Tax Credits of Input Tax" should be read in its entirety not in separate parts. Subsection ([C]) cannot be isolated from the rest of the subsections of Section 112 of the 1997 NIRC. A statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot be extracted from any single part thereof but from a general consideration of the statute as a whole.[14] (Citations omitted)

The CIR sought a reconsideration of the CTA *en banc* Decision dated June 16, 2010 but it was denied by the CTA *en banc* in its Resolution[15] dated October 14, 2010.

The Issue

Essentially, the issue presented to the Court for resolution is whether the CTA *en banc* erred in holding that TSC's petition for review with the CTA was not prematurely filed.

The Court's Ruling

The petition is meritorious.

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

[15] *Id.* at 82-121.

Section 112 of the NIRC provides for the rules to be followed in claiming a refund/tax credit of unutilized input VAT. Subsections (A) and (C) thereof provide that:

Sec. 112. *Refunds or Tax Credits of Input Tax. —*

(A) *Zero-Rated or Effectively Zero-Rated Sales.*—Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally,* That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.*—In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

x x x x x x x x x

Any unutilized input VAT attributable to zero-rated or effectively zero-rated sales may be claimed as a refund/tax credit. Initially, claims for refund/tax credit for unutilized input VAT should be filed with the BIR, together with the complete documents in support of the claim. Pursuant to Section 112(A) of the NIRC, the administrative claim for refund/tax credit must be filed with the BIR within two years after the close of the taxable quarter when the sales were made.

Under Section 112(C) of the NIRC, the CIR is given 120 days from the submission of complete documents in support of the application for refund/tax credit within which to either grant or deny the claim. In case of (1) full or partial denial of the claim or (2) the failure of the CIR to act on the claim within 120 days from the submission of complete documents, the taxpayer-claimant may, within 30 days from receipt of the CIR decision denying the claim or after the lapse of the 120-day period, file a petition for review with the CTA.

The CTA *en banc* and the CTA First Division opined that a taxpayer-claimant is permitted to file a judicial claim for refund/tax credit with the CTA notwithstanding that the 120-day period given to the CIR to decide an administrative claim had not yet lapsed. That TSC, in view of the fact that the two-year prescriptive period for claiming refund/tax credit of unutilized input VAT under Section 112(A) of the NIRC is about to lapse, had the right to seek judicial redress for its claim for refund/tax credit *sans* compliance with the 120-day period under Section 112(C) of the NIRC.

The Court does not agree.

The pivotal question of whether the imminent lapse of the two-year period under Section 112(A) of the NIRC justifies the filing of a judicial claim with the CTA without awaiting the lapse of the 120-day period given to the CIR to decide the administrative claim for refund/tax credit had already been settled by the Court. In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[16] the Court held that:

[16] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

However, notwithstanding the timely filing of the administrative claim, we are constrained to deny respondent's claim for tax refund/credit for having been filed in violation of Section 112([C]) of the NIRC, x x x:

x x x x x x x x x

Section 112([C]) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to CTA within 30 days.

In this case, the administrative and the judicial claims were simultaneously filed on September 30, 2004. Obviously, respondent did not wait for the decision of the CIR or the lapse of the 120-day period. For this reason, we find the filing of the judicial claim with the CTA premature.

Respondent's assertion that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period has no legal basis.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection ([C]) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112([C]) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112([C]) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA.[17] (Citations omitted and emphasis ours)

Further, in *Commissioner of Internal Revenue v. San Roque Power Corporation*,[18] the Court emphasized that the 120-day period that is given to the CIR within which to decide claims for refund/tax credit of unutilized input VAT is **mandatory** and **jurisdictional**. The Court categorically held that the taxpayer-claimant must wait for the 120-day period to lapse, should there be no decision fully or partially denying the claim, before a petition for review may be filed with the CTA. Otherwise, the petition would be rendered premature and without a cause of action. Consequently, the **CTA does not have the jurisdiction to take cognizance of a petition for review filed by the taxpayer-claimant should there be no decision by the CIR on the claim for refund/tax credit or the 120-day period had not yet lapsed**. Thus:

Clearly, San Roque failed to comply with the 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny San Roque's application for tax refund or credit. It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. x x x.

Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.

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[17] *Id.* at 442-444.

[18] G.R. No. 187485, February 12, 2013, 690 SCRA 336.

The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the Commissioner of Internal Revenue in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review.[19] (Citations omitted and emphasis supplied)

That the two-year prescriptive period within which to file a claim for refund/tax credit of unutilized input VAT under Section 112(A) of the NIRC is about to lapse is inconsequential and would not justify the immediate filing of a petition for review with the CTA *sans* compliance with the 120-day mandatory period. To stress, under Section 112(C) of the NIRC, a taxpayer-claimant may only file a petition for review with the CTA within 30 days from either: (1) the receipt of the decision of the CIR denying, in full or in part, the claim for refund/tax credit; or (2) the lapse of the 120-day period given to the CIR to decide the claim for refund/tax credit.

The 120-day mandatory period may extend beyond the two-year prescriptive period for filing a claim for refund/tax credit under Section 112(A) of the NIRC. Consequently, the 30-day period given to the taxpayer-claimant likewise need not fall under the two-year prescriptive period. What matters is that the administrative claim for refund/tax credit of unutilized input VAT is filed with the BIR within the two-year prescriptive period. In *San Roque*, the Court explained that:

There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long

[19] *Id.* at 380-382.

as the administrative claim is filed within the two-year prescriptive period.

First, Section 112(A) clearly, plainly, and unequivocally provides that the taxpayer "may, **within two (2) years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of the creditable input tax due or paid to such sales." In short, the law states that the taxpayer may apply with the Commissioner for a refund or credit "**within two (2) years**," **which means at anytime within two years**. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.

Second, Section 112(C) provides that the Commissioner shall decide the application for refund or credit "within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A)." The reference in Section 112(C) of the submission of documents "in support of the application filed in accordance with Subsection A" means that the application in Section 112(A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two-year prescriptive period in Section 112(A) refers to the period within which the taxpayer can file an administrative claim for tax refund or credit. **Stated otherwise, the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner**. As held in *Aichi*, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund' **refers to applications for refund/credit with the CIR and not to appeals made to the CTA**."

Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period**. Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If

the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.

The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain, and unequivocal language.[20] (Citation omitted and emphasis supplied)

It is undisputed that TSC filed its administrative claim for refund/tax credit with the BIR on March 11, 2002, which is still within the two-year prescriptive period under Section 112(A) of the NIRC. However, without waiting for the CIR decision or the lapse of the 120-day period from the time it submitted its complete documents in support of its claim, TSC filed a petition for review with the CTA on April 1, 2002 – a mere 21 days after it filed its administrative claim with the BIR. Clearly, TSC's petition for review with the CTA was prematurely filed; the CTA had no jurisdiction to take cognizance of TSC's petition since there was no decision as yet by the CIR denying TSC's claim, fully or partially, and the 120-day period under Section 112(C) of the NIRC had not yet lapsed.

Nevertheless, TSC submits that the requirement to exhaust the 120-day period under Section 112(C) of the NIRC prior to filing the judicial claim with the CTA is a species of the doctrine of exhaustion of administrative remedies; that the non-observance of the doctrine merely results in lack of cause of action, which ground may be waived for failure to timely invoke the same. TSC claims that the issue of its non-compliance with the 120-day period, as a ground to deny its claim, was already waived since the CIR did not raise it in the proceedings

[20] *Id.* at 390-392.

before the CTA First Division.

The Court does not agree. In *San Roque*, the Court opined that a petition for review that is filed with the CTA without waiting for the 120-day mandatory period renders the same void. The Court then pointed out that a person committing a void act cannot claim or acquire any right from such void act. Thus:

> San Roque's failure to comply with the 120-day **mandatory** period renders its petition for review with the CTA void. Article 5 of the Civil Code provides, "Acts executed against provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." San Roque's void petition for review cannot be legitimized by the CTA or this Court because Article 5 of the Civil Code states that such void petition cannot be legitimized "except when the law itself authorizes [its] validity." There is no law authorizing the petition's validity.
>
> It is hornbook doctrine that a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from his void act. A right cannot spring in favor of a person from his own void or illegal act. This doctrine is repeated in Article 2254 of the Civil Code, which states, "No vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the rights of others." For violating a mandatory provision of law in filing its petition with the CTA, San Roque cannot claim any right arising from such void petition. Thus, San Roque's petition with the CTA is a mere scrap of paper.[21] (Citation omitted and emphasis supplied)

Accordingly, TSC's failure to comply with the 120-day mandatory period under Section 112(C) of the NIRC renders its petition for review with the CTA void. It is a mere scrap of paper from which TSC cannot derive or acquire any right notwithstanding the supposed failure on the part of the CIR to raise the issue of TSC's non-compliance with the 120-day period in the proceedings before the CTA First Division. In any case, the Court finds that the CIR raised the issue of TSC's non-compliance with the 120-days mandatory period in the motion

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[21] *Id.* at 382-383.

for reconsideration that was filed with the CTA First Division. Further, the CIR likewise raised the same issue in the petition for review that was filed with the CTA *en banc*.

In insisting that the 120-day period under Section 112(C) of the NIRC is not mandatory, TSC further points out that the BIR, under BIR Ruling No. DA-489-03 dated December 10, 2003 and Revenue Memorandum Circular No. 49-03 (RMC No. 49-03) dated April 15, 2003, had already laid down the rule that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA. As such, the TSC claims, its failure to comply with the 120-day mandatory period is not cause to deny its judicial claim for refund/tax credit.

TSC's assertion is untenable. RMC No. 49-03, in part, reads:

> In cases where the taxpayer has filed a "Petition for Review" with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.
>
> If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate/tax refund processed administratively. However, if the

taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of the investigation of the investigating/processing office. (Citation omitted and emphasis supplied)

In *San Roque*, the Court had already clarified that nowhere in RMC No. 49-03 was it stated that a taxpayer-claimant need not wait for the lapse of the 120-day mandatory period before it can file its judicial claim with the CTA. RMC No. 49-03 only authorized the BIR to continue the processing of a claim for refund/tax credit notwithstanding that the same had been appealed to the CTA, *viz*:

There is nothing in RMC 49-03 that states, expressly or impliedly, that the taxpayer need not wait for the 120-day period to expire before filing a judicial claim with the CTA. RMC 49-03 merely authorizes the BIR to continue processing the administrative claim even after the taxpayer has filed its judicial claim, without saying that the taxpayer can file its judicial claim before the expiration of the 120-day period. RMC 49-03 states: "In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (either the Bureau of Internal Revenue or the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance), the administrative agency and the court may act on the case separately." Thus, if the taxpayer files its judicial claim before the expiration of the 120-day period, the BIR will nevertheless continue to act on the administrative claim because such premature filing cannot divest the Commissioner of his statutory power and jurisdiction to decide the administrative claim within the 120-day period.

On the other hand, if the taxpayer files its judicial claim after the 120-day period, the Commissioner can still continue to evaluate the administrative claim. There is nothing new in this because even after the expiration of the 120-day period, the Commissioner should still

evaluate internally the administrative claim for purposes of opposing the taxpayer's judicial claim, or even for purposes of determining if the BIR should actually concede to the taxpayer's judicial claim. The internal administrative evaluation of the taxpayer's claim must ***necessarily*** continue to enable the BIR to oppose intelligently the judicial claim or, if the facts and the law warrant otherwise, for the BIR to concede to the judicial claim, resulting in the termination of the judicial proceedings.

What is important, as far as the present cases are concerned, is that the mere filing by a taxpayer of a judicial claim with the CTA before the expiration of the 120-day period cannot operate to divest the Commissioner of his jurisdiction to decide an administrative claim within the 120-day mandatory period, *unless* the Commissioner has clearly given cause for equitable estoppel to apply as expressly recognized in Section 246 of the Tax Code.[22] (Citation omitted and emphasis supplied)

As regards BIR Ruling No. DA-489-03, the Court, in *San Roque*, held that:

BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.

There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's

[22] *Id.* at 399-400.

assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.

x x x x x x x x x

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. x x x.[23] (Citation omitted and emphasis supplied)

Indeed, BIR Ruling No. DA-489-03 provided that the taxpayer-claimant may already file a judicial claim for refund/tax credit with the CTA notwithstanding that the 120-day mandatory period under Section 112(C) of the NIRC had not yet lapsed. Being a general interpretative rule, the CIR is barred from questioning the CTA's assumption of jurisdiction on the ground that the 120-day mandatory period under Section 112(C) of the NIRC had not yet lapsed since *estoppel* under Section 246[24] of the NIRC had already set in. Nevertheless, the Court clarified that taxpayers can only rely on BIR Ruling No. DA-489-03 **from the time of its issuance on December 10, 2003 up to its reversal by this Court in *Aichi* on October 6, 2010**, where it was held that the 120-day period under Section 112(C)

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[23] *Id.* at 401, 404.

[24] Section 246 of the NIRC of 1997 states that:

Section 246. Non-Retroactivity of Rulings.–Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;

(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) Where the taxpayer acted in bad faith.

of the NIRC is mandatory and jurisdictional.

TSC filed its judicial claim for refund/tax credit of its unutilized input VAT with the CTA on April 1, 2002 – more than a year before the issuance of BIR Ruling No. DA-489-03. Accordingly, TSC cannot benefit from the declaration laid down in BIR Ruling No. DA-489-03. As stressed by the Court in *San Roque*, prior to the issuance of BIR Ruling No. DA-489-03, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law.

TSC nevertheless claims that the Court's ruling in *Aichi* should only be applied prospectively; that prior to *Aichi*, the Court supposedly ruled that a taxpayer-claimant need not await the lapse of the 120-day period under Section 112(C) of the NIRC before filing a petition for review with the CTA as shown by the Court's ruling in the cases of *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*,[25] *San Roque Power Corporation v. Commissioner of Internal Revenue*,[26] and *AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue*.[27]

The Court does not agree. There is no basis to TSC's claim that this Court, prior to *Aichi*, had ruled that a taxpayer may file a judicial claim for refund/tax credit with the CTA *sans* compliance with the 120-day mandatory period. The cases cited by TSC do not even remotely support its contention. Indeed, nowhere in the said cases did the Court even discuss the 120-day mandatory period under Section 112(C) of the NIRC.

In *Intel*, the administrative claim for refund/tax credit of unutilized input VAT was filed with the BIR on May 18, 1999. Due to the CIR's inaction on its claim for refund/tax credit, the petitioner therein filed a petition for review with CTA on June 30, 2000 – more than a year after it filed its administrative claim with the BIR. Further, the issue in the said case is only

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[25] 550 Phil. 751 (2007).

[26] G.R. No. 180345, November 25, 2009, 605 SCRA 536.

[27] G.R. No. 182364, August 3, 2010, 626 SCRA 567.

limited to whether sales invoices, which do not bear the BIR authority to print and do not indicate the TIN-V, are sufficient evidence to prove that the taxpayer is engaged in sales which are zero-rated or effectively zero-rated for purposes of claiming unutilized input VAT refund/tax credit.

Similarly, in *San Roque Power Corporation v. Commissioner of Internal Revenue*, the Court did not even remotely touch on the issue of the application of the 120-day mandatory period under Section 112(C) of the NIRC. The petitioner in the said case filed administrative claims for refund/tax credit of its unutilized input VAT for the first, second, third, and fourth quarters of the taxable year 2002 on June 19, 2002, October 5, 2002, February 27, 2003, and May 29, 2003, respectively. The CIR failed to act on the said claims for refund/tax credit within the 120-day period, which prompted the petitioner therein to file a petition for review with the CTA on April 5, 2004. Moreover, the issue that was resolved by the Court in the said case is whether the petitioner therein was able to prove the existence of zero-rated or effectively zero-rated sales, to which creditable input taxes may be attributed.

Likewise, *AT&T Communications* only dealt with the substantiation requirements in claiming refund/tax credit of unutilized input VAT, *i.e.*, whether VAT invoices are sufficient evidence to prove the existence of zero-rated or effectively zero-rated sales.

Finally, even if TSC was able to substantiate, through the documents it submitted, that it is indeed entitled to a refund/tax credit of its unutilized input VAT for the taxable year 2000, its claim would still have to be denied. "Tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same."[28] "The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied **all the statutory and administrative**

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[28] *Phil. Geothermal, Inc. v. Commissioner of Internal Revenue*, 503 Phil. 278, 286 (2005).

requirements to be entitled to the tax refund."[29] TSC, in prematurely filing a petition for review with the CTA, failed to comply with the 120-day mandatory period under Section 112(C) of the NIRC. Thus, TSC's claim for refund/tax credit of its unutilized input VAT should be denied.

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition is **GRANTED**. The Decision dated June 16, 2010 and the Resolution dated October 14, 2010 of the Court of Tax Appeals *en banc* in CTA EB No. 504 are hereby **REVERSED** and **SET ASIDE**. Team Sual Corporation's claim for refund/tax credit of its unutilized input valued-added tax for the taxable year 2000 is **DENIED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 195525. February 5, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILFREDO GUNDA *ALIAS* FRED,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; COMMITTED WHEN THE KILLING IS ATTENDED BY TREACHERY; CASE AT BAR.— [W]e find no cogent reason to depart from the findings of the trial court as affirmed by the CA, that appellant is guilty beyond reasonable

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[29] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*, G.R. No. 163835, July 7, 2010, 624 SCRA 340, 358.

doubt of the crime of murder. Two prosecution witnesses positively identified him as the person who waylaid the victim, and with the help of his conspirators, stabbed the victim several times. According to the postmortem findings, the victim suffered 12 stab wounds which caused his death. There is also no doubt in our mind that the attack on the victim was attended by treachery. The victim was unarmed and had no inkling of the impending attack on his person. In fact he was just on his way home together with his son Eladio Jr. The victim was attacked by appellant from behind with a blow to his head with a wooden pole. His cohorts then held the victim's arms rendering him helpless and immobile. In such position, there is no opportunity for the victim to escape or even offer a feeble resistance. Appellant then delivered the *coup de grâce* by stabbing the victim multiple times. Undoubtedly, treachery qualified the killing to murder. "There is treachery when the offender commits [a crime] against the person, employing means, methods or forms in the execution thereof which tends directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." As regards conspiracy, the CA correctly rules that it is not a circumstance which would aggravate or qualify the crime.

2. ID.; ID.; PENALTY; THE PROPER IMPOSABLE PENALTY IN CASE AT BAR IS *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE.— Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusion perpetua* to death. There being no other aggravating circumstance other than the qualifying circumstance of treachery, the CA correctly held that the proper imposable penalty is *reclusion perpetua*, the lower of the the two indivisible penalties. "It must be emphasized, however, that [appellant is] not eligible for parole pursuant to Section 3 of Republic Act No. 9346 which states that 'persons convicted of offenses with *reclusion perpetua*, or whose sentence will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.'"

3. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; EXEMPLARY DAMAGES, MORAL DAMAGES AND TEMPERATE DAMAGES; AWARDED IN CASE AT BAR.— As regards the damages, the amount of civil indemnity must be increased to ₱75,000.00 in line with prevailing jurisprudence. Exemplary

damages must likewise be increased to ₱30,000.00. Moral damages in the amount of ₱50,000.00, however, was correctly awarded by the trial court and the CA. Moreover, we note that the trial court and the CA did not award actual damages. In lieu thereof, we award temperate damages in the amount of ₱25,000.00 "as it cannot be denied that the heirs of the [victim] suffered pecuniary loss although the exact amount was not proved." "This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification." In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the March 30, 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 00397 which affirmed with modification the May 20, 2005 Decision [2] of the Regional Trial Court (RTC) of Borongan, Eastern Samar, Branch 2, finding appellant Wilfredo Gunda *alias* Fred (appellant) guilty beyond reasonable doubt of the crime of murder.

Factual Antecedents

At about 4:00 o'clock in the afternoon of May 25, 1997, the victim, Eladio Globio, Sr., and his son, Eladio Jr., were walking along a trail at *Sitio* Candulungon, *Barangay* Cabay, Balangkayan, Eastern Samar. Suddenly, when Eladio Jr. was about 10 meters ahead of his father, the latter was waylaid by appellant and his

[1] CA *rollo*, pp. 96-110; penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Agnes Reyes Carpio and Socorro B. Inting.

[2] Records, pp. 340-360; penned by Judge Arnulfo O. Bugtas.

unidentified companions. The John Does held the victim's arms whereupon appellant stabbed him several times. Fearing for his life, Eladio Jr. fled. The unidentified assailants pursued him. Fortunately, he was able to outrun them and was able to reach their house. In the morning of the following day, Eladio Jr. went to the house of his sister and informed her of the death of their father. They then reported the incident to the police authorities who eventually arrested the appellant. The body of the victim was recovered and post-mortem examinations revealed that he suffered multiple stab wounds which caused his death.

Aside from Eladio Jr., Teofilo Ambal, Jr. (Ambal) who is a brother-in-law of the appellant, also witnessed the crime. In the afternoon of May 25, 1997, while Ambal was at his farm gathering feeds for his pigs, he saw appellant who was armed with a wooden pole position himself at the back of the victim and strike the latter's head with the wood. The companions of appellant then held the victim's arms whereupon appellant drew a bolo locally known as *depang* from his waist and stabbed the victim several times. Fearing for his life, Ambal likewise left the crime scene.

On July 31, 1997, an Information[3] was filed charging appellant and the John Does with the crime of murder. The accusatory portion of the Information reads:

> That on May 25, 1997, at about 4:00 o'clock in the afternoon at *Sitio* Candulungon, *Barangay* Cabay, Balangkayan, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another, with intent to kill and with evident premeditation and treachery, and without justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault, stab and wound Eladio Globio, Sr., with the use of a sharp bladed weapon (*Depang*) which the accused provided themselves for the purpose, thereby inflicting injuries upon the latter, which injuries caused the death of the victim, to the damage and prejudice of the heirs of the victim.
>
> CONTRARY TO LAW, with aggravating circumstances that the crime committed in an uninhabited place and the superior strength [sic].[4]

[3] *Id.* at 5.

[4] *Id.*

Arraigned on September 10, 1997, appellant pleaded not guilty to the charge.[5] The other accused who have not been identified remained at large.

Appellant denied the charge against him. He claimed that in the afternoon of May 25, 1997, he was at *Barangay* Camada gathering and cleaning rattan poles.

Ruling of the Regional Trial Court

On May 20, 2005, the RTC of Borongan, Eastern Samar, Branch 2, rendered its Decision[6] finding appellant guilty as charged. The dispositive portion of the Decision reads:

WHEREFORE, finding accused Wilfredo Gunda guilty beyond reasonable doubt of the crime of murder, he is sentenced to suffer the penalty of DEATH; and to pay the heirs of the victim the sum of ₱50,000.00 as civil indemnity, another sum of ₱50,000.00 as moral damages; and another sum of ₱25,000.00 as exemplary damages.

SO ORDERED.[7]

The trial court disregarded the denial of the appellant. On the other hand, it lent full credence to the testimonies of Eladio Jr. and Ambal who both positively identified appellant as the assailant. The RTC noted that their testimonies coincided with the postmortem findings of Dr. Samuel Baldono that the victim suffered multiple stab wounds which caused his death. The RTC likewise brushed aside the alibi of appellant. It noted that although he claimed that he was in *Barangay* Camada at the time of the incident, appellant failed to prove that it was physically impossible for him to be present at *Barangay* Cabay where the crime took place. Appellant even admitted that the distance between the two *barangays* could be traversed in an hour or even less. The RTC also found that appellant conspired with the John Does in committing the crime. It also noted that treachery attended the commission of the crime because the

[5] *Id.* at 59-60.

[6] *Id.* at 340-360.

[7] *Id.* at 360.

victim was unarmed and totally unaware of the impending attack. The attack was sudden thus depriving the victim of any opportunity to escape or defend himself.

In imposing the death penalty, the RTC considered treachery and conspiracy as qualifying circumstances.

Ruling of the Court of Appeals

On March 30, 2010, the CA rendered its Decision, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the appeal is DENIED. The Decision dated May 20, 2005 of the Regional Trial Court (RTC), 8th Judicial Region, Branch 2, Borongan, Eastern Samar, is AFFIRMED with MODIFICATION that the lesser penalty of *Reclusion Perpetua* instead of Death be imposed against appellant.
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> SO ORDERED.[8]

The CA affirmed the factual findings of the trial court that indeed, it was appellant, in conspiracy with the other John Does, who killed the victim. The CA also agreed with the findings of the trial court that the killing was done in a treacherous manner. However, the CA noted that although the trial court properly appreciated treachery and conspiracy to have attended the commission of the crime, the presence of both would not warrant the imposition of the death penalty. It ratiocinated that -

> Treachery in the present case is a qualifying, not a generic aggravating circumstance. Its presence served to characterize the killing as murder; it cannot at the same time be considered as a generic aggravating circumstance to warrant the imposition of the maximum penalty. Since treachery qualified the commission of the crime to murder, this circumstance could no longer be appreciated anew as a generic aggravating circumstance to warrant the imposition of the death penalty. Furthermore, although there was conspiracy in this case, it is neither a qualifying circumstance [nor] a generic aggravating circumstance to warrant the imposition of the supreme penalty of death.
>
> The penalty for the crime of murder is *reclusion perpetua* to death.

[8] CA *rollo*, pp. 109-110.

The two penalties being both indivisible, and there being neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty of *reclusion perpetua* should be applied pursuant to the second paragraph of the Revised Penal Code.[9]

Aggrieved, appellant filed this appeal[10] to which the CA gave due course in its Resolution[11] of December 1, 2010.

On March 21, 2011, we required the parties to file their respective supplemental briefs.[12] However, both parties opted not to file their briefs anymore considering that their arguments had been amply discussed in the briefs that they filed before the CA.[13]

Our Ruling

We dismiss the appeal.

Based on the above narrations, we find no cogent reason to depart from the findings of the trial court as affirmed by the CA, that appellant is guilty beyond reasonable doubt of the crime of murder. Two prosecution witnesses positively identified him as the person who waylaid the victim, and with the help of his conspirators, stabbed the victim several times. According to the postmortem findings, the victim suffered [12] stab wounds which caused his death. There is also no doubt in our mind that the attack on the victim was attended by treachery. The victim was unarmed and had no inkling of the impending attack on his person. In fact, he was just on his way home together with his son Eladio Jr. The victim was attacked by appellant from behind with a blow to his head with a wooden pole. His cohorts then held the victim's arms rendering him helpless and immobile. In such position, there is no opportunity for the victim to escape or even offer a feeble resistance. Appellant then delivered the

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[9] *Id.* at 109.

[10] *Id.* at 131.

[11] *Id.* at 133.

[12] *Rollo*, p. 22.

[13] *Id.* at 24-26; 33-34.

coup de grâce by stabbing the victim multiple times. Undoubtedly, treachery qualified the killing to murder. "There is treachery when the offender commits [a crime] against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."[14] As regards conspiracy, the CA correctly ruled that it is not a circumstance which would aggravate or qualify the crime.

Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusion perpetua* to death. There being no other aggravating circumstance other than the qualifying circumstance of treachery, the CA correctly held that the proper imposable penalty is *reclusion perpetua*, the lower of the two indivisible penalties. "It must be emphasized, however, that [appellant is] not eligible for parole pursuant to Section 3 of Republic Act No. 9346 which states that 'persons convicted of offenses punished with *reclusion perpetua*, or whose sentence will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended'."[15]

As regards the damages, the amount of civil indemnity must be increased to ₱75,000.00 in line with prevailing jurisprudence.[16] Exemplary damages must likewise be increased to ₱30,000.00.[17] Moral damages in the amount of ₱50,000.00, however, was correctly awarded by the trial court and the CA.[18] Moreover, we note that the trial court and the CA did not award actual damages. In lieu thereof, we award temperate damages in the amount of ₱25,000.00 "as it cannot be denied that the heirs of the [victim] suffered pecuniary loss although the exact amount

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[14] *People v. Jalbonian*, G.R. No. 180281, July 1, 2013, citing *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747.

[15] *People v. Bacatan*, G.R. No. 203315, September 18, 2013.

[16] *People v. Jalbonian*, *supra* note 14.

[17] *Id.*

[18] *Id.*

was not proved."[19] "This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification."[20] In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.[21]

WHEREFORE, the appeal is **DISMISSED**. The March 30, 2010 Decision of the Court of Appeals in CA-G.R. CEB CR-HC No. 00397 which affirmed with modification the May 20, 2005 Decision of the Regional Trial Court of Borongan, Eastern Samar, Branch 2, finding appellant Wilfredo Gunda *alias* Fred guilty beyond reasonable doubt of the crime of murder is **AFFIRMED with MODIFICATIONS**. As modified, appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and is ordered to pay the heirs of the victim the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages. Interest on all damages awarded is imposed at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Brion, Perez and *Perlas-Bernabe, JJ.,* concur.

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[19] *People v. Lucero*, G.R. No. 179044, December 6, 2010, 636 SCRA 533, 543.

[20] *People v. Beduya*, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 289, citing *People v. Carillo*, 388 Phil. 1010, 1025 (2000).

[21] *People v. Jalbonian*, *supra* note 14.

THIRD DIVISION

[G.R. No. 200575. February 5, 2014]

INTEL TECHNOLOGY PHILIPPINES, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION AND JEREMIAS CABILES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; MUST EXCLUSIVELY RAISE QUESTIONS OF LAW; EXCEPTION.—** As a general rule, this Court is not a trier of facts and a petition for review on *certiorari* under Rule 45 of the Rules of Court must exclusively raise questions of law. Nevertheless, this Court will not hesitate to deviate from what are clearly procedural guidelines and disturb and strike down the findings of the CA and those of the labor tribunals if there is a showing that they are unsupported by the evidence on record or there was a patent misappreciation of facts. Indeed, that the impugned decision of the CA is consistent with the findings of the labor tribunals does not *per se* conclusively demonstrate its correctness. By way of exception to the general rule, this Court will scrutinize the facts if only to rectify the prejudice and injustice resulting from an incorrect assessment of the evidence presented.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; RESIGNATION; COULD BE INFERRED FROM THE ACTS OF THE EMPLOYEE BEFORE AND AFTER THE ALLEGED RESIGNATION; CASE AT BAR.—** Resignation is the formal relinquishment of an office, the overt act of which is coupled with an intent to renounce. This intent could be inferred from the acts of the employee before and after the alleged resignation. In this case, Cabiles, while still on a temporary assignment in Intel Chengdu, was offered by Intel HK the job of a Finance Manager. x x x Despite a non-favorable reply as to his retirement concerns, Cabiles still accepted the offer of Intel HK. His acceptance of the offer meant letting go of the retirement benefits he now claims as he was informed through email correspondence that his 9.5 years of service with Intel Phil. would not be rounded off in his favor.

He, thus, placed himself in this position, as he chose to be employed in a company that would pay him more than what he could earn in Chengdu or in the Philippines. The choice of staying with Intel Phil. *vis-à-vis* a very attractive opportunity with Intel HK put him in a dilemma. If he would wait to complete ten (10) years of service with Intel Phil. (in about 4 months) he would enjoy the fruits of his retirement but at the same time it would mean forfeiture of Intel HK's compensation offer in the amount HK$ 942,500.00, an amount a lot bigger than what he would receive under the plan. He decided to forfeit and became Intel HK's newest hire. All these are indicative of the clearest intent of Cabiles to sever ties with Intel Phil. He chose to forego his tenure with Intel Phil., with all its associated benefits, in favor of a more lucrative job for him and his family with Intel HK.

3. ID.; ID.; ID.; REQUISITES.— The continuity, existence or termination of an employer-employee relationship in a typical secondment contract or any employment contract for that matter is measured by the following yardsticks: 1. the selection and engagement of the employee; 2. the payment of wages; 3. the power of dismissal; and 4. the employer's power to control the employee's conduct.

4. ID.; ID.; ID.; THE ASSUMPTION OF A POSITION WITH A DIFFERENT EMPLOYER, RANK, COMPENSATION AND BENEFITS CONSTITUTES SEVERANCE OF EMPLOYMENT; CASE AT BAR.— Intel HK became the new employer. It provided Cabiles his compensation. Cabiles then became subject to Hong Kong labor laws, and necessarily, the rights appurtenant thereto, including the right of Intel HK to fire him on available grounds. Lastly, Intel HK had control and supervision over him as its new Finance Manager. Evidently, Intel Phil. no longer had any control over him. Although in various instances, his move to Hong Kong was referred to as an "assignment," it bears stressing that it was categorized as a "permanent transfer." In *Sta. Maria v. Lopez*, the Court held that "*no permanent transfer can take place unless the officer or employee is first removed from the position held, and then appointed to another position.*" Undoubtedly, Cabiles' decision to move to Hong Kong required the abandonment of his permanent position with Intel Phil. in order for him to assume a position in an entirely different company. Clearly, the "transfer" was more than just

an assignment. It constituted a severance of Cabiles' relationship with Intel Phil., for the assumption of a position with a different employer, rank, compensation and benefits.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; WAIVERS AND QUITCLAIMS; VALIDLY EXECUTED IN CASE AT BAR.— [T]he Waiver executed by Cabiles was valid. In *Goodrich Manufacturing Corporation, v. Ativo,* the Court reiterated the standards that must be observed in determining whether a waiver and quitclaim had been validly executed x x x. The Court x x x sees no clear evidence in the records showing that Cabiles was constrained into signing the document. Also, it cannot be said that Cabiles did not fully understand the consequences of signing the Waiver. Being a person well-versed in matters of finance, it would have been impossible for him not to have comprehended the consequences of signing a waiver. Failing to see any evidence to warrant the disregard of the Waiver, the Court is unable to affirm the CA and, hence, declares it as valid and binding between Cabiles and Intel Phil. x x x Suffice it to state that nothing is clearer than the words used in the Waiver duly signed by Cabiles – that all claims, in the present and in the future, were waived in consideration of his receipt of the amount of ₱165,857.62. Because the waiver included all present and future claims, the non-accrual of benefits cannot be used as a basis in awarding retirement benefits to him.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.

Laguesma Magsalin Consulta & Gastardo Law Offices for private respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Intel Technology Philippines,

Inc. (*Intel Phil.*). It assails the October 28, 2011[1] and February 3, 2012[2] Resolutions of the Court of Appeals *(CA)* in CA-G.R. SP No.118880, which dismissed the petition for *certiorari* filed by Intel Phil. thereby affirming the September 2, 2010 Decision[3] of the National Labor Relations Commission *(NLRC)* and its February 9, 2011 Resolution. The NLRC decision modified the March 18, 2010 Decision[4] of the Labor Arbiter *(LA)*, and held Intel Phil. solely liable for the retirement benefits of respondent Jeremias Cabiles *(Cabiles)*.

The Facts

This case concerns the eligibility of Cabiles to receive retirement benefits from Intel Phil. granted to employees who had complied with the ten (10)-year service period requirement of the company.

Cabiles was initially hired by Intel Phil. on April 16, 1997 as an Inventory Analyst. He was subsequently promoted several times over the years and was also assigned at Intel Arizona and Intel Chengdu. He later applied for a position at Intel Semiconductor Limited Hong Kong *(Intel HK)*.

In a letter,[5] dated December 12, 2006, Cabiles was offered the position of Finance Manager by Intel HK. Before accepting the offer, he inquired from Intel Phil., through an email, the consequences of accepting the newly presented opportunity in Hong Kong, to wit:

Are there any clearance requirements I need to fulfil as I move as a local hire to Hong Kong starting February 1?? I am still on my

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[1] *Rollo,* pp. 69-71. Penned by Associate Justice Normandie B. Pizarro, with Associate Justice Amelita G. Tolentino and Associate Justice Rodil V. Zalameda concurring.

[2] *Id.* at 73-74.

[3] *Id.* at 113-123. Penned by Commissioner Angelo Ang Palaña, with Commissioners Herminio V. Suelo and Numeriano D. Villena concurring.

[4] *Id.*, Position Paper, pp. 267-272. Penned by Labor Arbiter Enrico Angelo C. Portillo.

[5] *Rollo,* pp. 368-369.

expat assignment in Chengdu till it ends January 31. Then immediately I become a HK local employee so I don't technically repatriate and work back to my home site Philippines at all. Nevertheless, I still need to close I think my employment there and so that all my ES benefits and clearance will be closed like conversion of my vacation leaves to cash, carry over of my service tenure in CV to HK *etc*. Please do let me know what process I need to go through or would an email notification be enough?

Another issue I would like to clarify is with regard to my retirement benefits. I will celebrate my 10th year of service with Intel on April 16, 2007. However, because I will be moving to Hong Kong as a local hire starting February 1, would I still be entitled to retirement benefits?? Do we roundup the years of service if its close enough to 10 years?? If not, what other alternatives I have or do I just lose my years of service at Intel Philippines? Any possibility that I keep my 9.5 years and start from there when I work in the Philippines again in the future??[6]

On January 23, 2007, Intel Phil., through Penny Gabronino *(Gabronino),* replied as follows:

Jerry – **you are not eligible to receive your retirement benefit given that you have not reached 10 years of service** at the time you moved to Hong Kong. We do not round up the years of service.

There will [be] no gap in your years of service. So in case that you move back to the Philippines your total tenure of service will be computed less on the period that you are out of Intel Philippines.[7] [Emphasis supplied]

On January 31, 2007, Cabiles signed the job offer.[8]

On March 8, 2007, Intel Phil. issued Cabiles his "Intel Final Pay Separation Voucher" indicating a net payout of ₱165,857.62. On March 26, 2007, Cabiles executed a Release, Waiver and Quitclaim *(Waiver)*[9] in favor of Intel Phil. acknowledging receipt

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[6] *Id.* at 581.

[7] *Id.* at 582.

[8] *Id.* at 369.

[9] *Id.* at 211.

of ₱165,857.62 as full and complete settlement of all benefits due him by reason of his separation from Intel Phil.

On September 8, 2007, after seven (7) months of employment, Cabiles resigned from Intel HK.

About two years thereafter, or on August 18, 2009, Cabiles filed a complaint for non-payment of retirement benefits and for moral and exemplary damages with the NLRC Regional Arbitration Branch-IV. He insisted that he was employed by Intel for 10 years and 5 months from April 1997 to September 2007 – a period which included his seven (7) month stint with Intel HK. Thus, he believed he was qualified to avail of the benefits under the company's retirement policy allowing an employee who served for 10 years or more to receive retirement benefits.

The Labor Arbiter's Decision

On March 18, 2010, the LA ordered Intel Phil. together with Grace Ong, Nida delos Santos, Gabronino, and Pia Viloria, to pay Cabiles the amount of HKD 419,868.77 or its peso equivalent as retirement pay with legal interest and attorney's fees. The LA held that Cabiles did not sever his employment with Intel Phil. when he moved to Intel HK, similar to the instances when he was assigned at Intel Arizona and Intel Chengdu. Despite the clarification made by Intel Phil. regarding his ineligibility to receive retirement benefits, the LA stated that Cabiles could not be faulted if he was made to believe his non-entitlement to retirement benefits. Thus, it should not prevent him from asserting his right to receive them. Finally, the Waiver executed by Cabiles when he left Intel Phil., was treated by the LA as no bar for claiming his retirement pay because it merely covered the last salary and commutation of sick leaves and vacation leaves to the exclusion of retirement benefits. The dispositive portion of the LA decision reads:

WHEREFORE, premises considered, Respondents are hereby ordered to pay complainant the amount of Four Hundred Nineteen Thousand Eight Hundred Sixty-Eight and 77/100 Hong Kong Dollars (HKD419,868.77) or its Peso equivalent as retirement pay with legal

interest until satisfied, and to pay attorney's fees equivalent to ten percent (10%) of the judgment award.

SO ORDERED.[10]

The NLRC Ruling

On appeal, the NLRC affirmed with modification the LA decision. In its September 2, 2010 Decision, the NLRC held Intel Phil. solely liable to pay Cabiles his retirement benefits. It determined that his decision to move to Intel HK was not definitive proof of permanent severance of his ties with Intel Phil. It treated his transfer to Hong Kong as akin to his overseas assignments in Arizona and Chengdu. As to the email exchange between Cabiles and Intel Phil., the NLRC considered the same as insufficient to diminish his right over retirement benefits under the law. Meanwhile, the NLRC disregarded the Waiver because at the time it was signed, the retirement pay due him had not yet accrued. Hence:

WHEREFORE, the appealed Decision is **MODIFIED**. Respondent-appellant Intel Technology Phil., Inc. is ordered to pay complainant-appellee Jeremias Cabiles the sum [xx] of Four Hundred Nineteen Thousand Eight Hundred Sixty Eight and 77/100 Hong Kong Dollars (HKD419,868.77) or its equivalent in Philippine peso as retirement pay together with legal interest thereon and attorney's fees computed at ten percent (10%) of the award.

The individual respondents-appellants Grace Ong, Nida delos Santos, Penny Gabronino and Pia Viloria are **RELIEVED** from any personal liability resulting from the foregoing.

SO ORDERED.[11]

Intel Phil. moved for reconsideration but its motion was denied in the NLRC Resolution,[12] dated February 9, 2011.

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[10] *Id.* at 272.

[11] *Id.* at 122.

[12] *Id.* at 125-137.

The CA Decision

Aggrieved, Intel Phil. elevated the case to the CA via a petition for *certiorari* with application for a Temporary Restraining Order *(TRO)* on April 5, 2011. The application for TRO was denied in a Resolution, dated July 5, 2011. A motion for reconsideration, dated July 27, 2011, was filed, but it was denied in a Resolution, dated October 28, 2011, which also dismissed the petition for *certiorari*.[13]

On December 1, 2011, Intel Phil. filed a motion for reconsideration.

Earlier, on September 19, 2011, pending disposition of the petition before the CA, the NLRC issued a writ of execution[14] against Intel Phil.:

> **NOW**, **THEREFORE**, you are commanded to proceed to the premises of respondent **INTEL TECHNOLOGY PHILIPPINES, INCORPORATED** located at Gateway Business Park, Javalera, General Trias, Cavite or anywhere in the Philippines where it could be located to collect the amount of Three Million Two Hundred One Thousand Three Hundred Ninety Eight Pesos and Sixty Centavos (₱3,201,398.60) and turn over the same to this Office for appropriate disposition.
>
> You are likewise directed to collect from the respondents the amount of Thirty One Thousand Five Hundred Ten Pesos (₱31,510.00) representing the execution fees pursuant to the provisions of the NLRC Manual of Execution of Judgment.
>
> In case you fail to collect the said amount in cash, you are directed to cause the satisfaction of the same out of the respondents' chattels or movable goods or in the absence thereof, out of the immovable properties not exempt from execution and return this Writ of Execution to the undersigned not more than five (5) years from receipt hereof together with the report not later than thirty (30) days from receipt and every thirty (30) days thereafter pursuant to Section 12, Rule XI of the 2001 NLRC Rules of Procedures.[15]

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[13] *Id.* at 69-71.

[14] *Id.* at 789-790.

[15] *Id.* at 790.

As ordered by the NLRC, Intel Phil. satisfied the judgment on December 13, 2011 by paying the amount of ₱3,201,398.60 which included the applicable withholding taxes due and paid to the Bureau of Internal Revenue. Cabiles received a net amount of ₱2,485,337.35, covered by the Bank of the Philippine Islands Manager's Check No. 0000000806.[16]

By reason thereof, Intel Phil. filed on December 21, 2011 a Supplement to the Petition for *Certiorari*[17] praying, in addition to the reliefs sought in the main, that the CA order the restitution of all the amounts paid by them pursuant to the NLRC's writ of execution, dated September 19, 2011.

In its February 3, 2012 Resolution,[18] the CA noted without action the supplement to the petition for *certiorari* of Intel Phil. and denied the December 21, 2011 motion for reconsideration.

Hence, this petition.

ISSUES

I

The Court of Appeals committed serious error in dismissing the Petition for *Certiorari* without expressing clearly and distinctly the facts and the law on which its decision was based.

II

The Court of appeals committed serious and reversible error in not finding that respondent NLRC gravely abused its discretion when it ruled that private respondent was entitled to retire under Intel Philippines' retirement plan.

III

The Court of Appeals committed serious and reversible error in not finding that respondent NLRC gravely abused its discretion in annulling private respondent's quitclaim.

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[16] *Id.* at 792.

[17] *Id.* at 794-799.

[18] *Id.* at 73.

IV

The Court of Appeals committed serious and reversible error in not finding that Cabiles has the legal obligation to return all the amounts paid by Intel pursuant to the writ of execution.[19]

Intel Phil. insists as serious error the CA's affirmation of the NLRC decision holding it liable for the retirement benefits claimed by Cabiles. It contends that he is disqualified to receive the benefits for his failure to complete the required minimum ten (10) years of service as he resigned to assume new responsibilities with Intel HK effective February 1, 2007.

Respondent's Position

In his Comment,[20] Cabiles submits (1) that the petition presents questions of fact which cannot be reviewed via Rule 45; and (2) that the CA did not err when it affirmed the NLRC ruling:

(a) for his entitlement to retirement pay as he was under the employ of Intel Phil. for more than ten (10) years in accordance with the prevailing retirement policy;

(b) for the nullity of the quitclaim as he was misled to believe that he was disqualified to receive retirement benefits; and

(c) for his right to receive legal interest, damages and attorney's fees.

Cabiles views his employment with Intel HK as a continuation of his service with Intel Phil. alleging that it was but an assignment by his principal employer, similar to his assignments to Intel Arizona and Intel Chengdu. Having rendered 9.5 years of service with Intel Phil. and an additional seven months with Intel HK, he claims that he had completed the required 10 year continuous service[21] with Intel Phil., thus, qualifying him for retirement benefits.

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

[20] *Id.* at 820-850.

[21] Intel Philippines Retirement Policy provides:

Section 7. Resignation Retirement Benefit

In its Reply**,** Intel Phil. reiterates the arguments contained in its petition.

The Court's Ruling

Review of Factual Findings

As a general rule, this Court is not a trier of facts and a petition for review on *certiorari* under Rule 45 of the Rules of Court must exclusively raise questions of law.[22] Nevertheless, this Court will not hesitate to deviate from what are clearly procedural guidelines and disturb and strike down the findings of the CA and those of the labor tribunals if there is a showing that they are unsupported by the evidence on record or there was a patent misappreciation of facts. Indeed, that the impugned decision of the CA is consistent with the findings of the labor tribunals does not *per se* conclusively demonstrate its correctness. By way of exception to the general rule, this Court will scrutinize the facts if only to rectify the prejudice and injustice resulting from an incorrect assessment of the evidence presented.[23]

It is in this wise that the Court agrees with Intel Phil. that the CA seriously erred in affirming the findings of the NLRC on the face of substantial evidence showing Cabiles' disqualification to receive the retirement benefits. The Court, therefore, reverses the ruling of the CA for the reasons hereinafter discussed.

Cabiles Resigned from Intel Philippines

Cabiles calls the attention of the Court to the lack of evidence proving his resignation. On the contrary, he states that no severance of relationship was made upon his transfer to Intel HK.

A participant who, with 60 days prior notice to the Company, resigns from the Company with the completion of at least ten (10) years of Plan Service, but without having entitlement to the benefit mentioned in Section 2 to Section 6 of this Article, shall be entitled to a lump sum benefit of Pensionable Salary per year of Pensionable Service. xxx

[22] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.,* G.R. No. 190515, January 6, 2011, 650 SCRA 656.

[23] *Timoteo H. Sarona v. NLRC, Royale Security Agency and Cesar S. Tan,* G.R. No. 185280, January 18, 2012, 663 SCRA 394, 415.

The Court is not convinced.

Resignation is the formal relinquishment of an office,[24] the overt act of which is coupled with an intent to renounce. This intent could be inferred from the acts of the employee before and after the alleged resignation.[25]

In this case, Cabiles, while still on a temporary assignment in Intel Chengdu, was offered by Intel HK the job of a Finance Manager.

In contemplating whether to accept the offer, Cabiles wrote Intel Phil. providing details and asking as follows:

> Are there any clearance requirements I need to fulfil as I move as a **local hire** to Hong Kong starting February 1?? I am still on my expat assignment in Chengdu till it ends January 31. Then immediately I become a HK **local employee** so **I don't technically repatriate and work back to my home site Philippines at all**. Nevertheless, I still need to **close** I think my employment there and so that all my ES benefits and clearance will be closed like conversion of my vacation leaves to cash, carry over of my service tenure in CV to HK *etc*. Please do let me know what process I need to go through or would an email notification be enough?
>
> Another issue I would like to clarify is with regard to my retirement benefits. Will celebrate my 10th year of service with Intel on April 16, 2007. However, because I will be **moving to Hong Kong as a local hire starting February 1**, would I still be entitled to retirement benefits?? Do we roundup the years of service if its close enough to 10 years?? If not, what other alternatives I have or do I just lose my years of service at Intel Philippines? Any possibility that I keep my 9.5 years and start it from there when I work in the Philippines again in the future??[26] [Emphases supplied]

This communication manifested two of his main concerns: a) clearance procedures; and b) the probability of getting his

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[24] *Go v. Court of Appeals*, G.R. No. 158922, May 28, 2004, 430 SCRA 358, 367

[25] *San Miguel Properties Philippines, Inc. v. Gucaban*, G.R. No. 153982, July 18, 2011, 654 SCRA 18, 28-29.

[26] *Rollo*, p. 581.

retirement pay despite the non-completion of the required 10 years of employment service. Beyond these concerns, however, was his acceptance of the fact that he would be ending his relationship with Intel Phil. as his employer. The words he used - *local hire, close, clearance* – denote nothing but his firm resolve to voluntarily disassociate himself from Intel Phil. and take on new responsibilities with Intel HK.

Despite a non-favorable reply as to his retirement concerns, Cabiles still accepted the offer of Intel HK.

His acceptance of the offer meant letting go of the retirement benefits he now claims as he was informed through email correspondence that his 9.5 years of service with Intel Phil. would not be rounded off in his favor. He, thus, placed himself in this position, as he chose to be employed in a company that would pay him more than what he could earn in Chengdu or in the Philippines.

The choice of staying with Intel Phil. *vis-à-vis* a very attractive opportunity with Intel HK put him in a dilemma. If he would wait to complete ten (10) years of service with Intel Phil. (in about 4 months) he would enjoy the fruits of his retirement but at the same time it would mean forfeiture of Intel HK's compensation offer in the amount of HK $ 942,500.00, an amount a lot bigger than what he would receive under the plan. He decided to forfeit and became Intel HK's newest hire.

All these are indicative of the clearest intent of Cabiles to sever ties with Intel Phil. He chose to forego his tenure with Intel Phil., with all its associated benefits, in favor of a more lucrative job for him and his family with Intel HK.

The position of Cabiles that he was being merely assigned leads the Court to its next point.

No Secondment Contract Exists

Cabiles views his employment in Hong Kong as an assignment or an extension of his employment with Intel Phil. He cited as

evidence the offer made to him as well as the letter, dated January 8, 2007,[27] both of which used the word "assignment" in reference to his engagement in Hong Kong as a clear indication of the alleged continuation of his ties with Intel Phil.

The foregoing arguments of Cabiles, in essence, speak of the "theory of secondment."

The Court, however, is again not convinced.

The continuity, existence or termination of an employer-employee relationship in a typical secondment contract or any employment contract for that matter is measured by the following yardsticks:

1. the selection and engagement of the employee;
2. the payment of wages;
3. the power of dismissal; and
4. the employer's power to control the employee's conduct.[28]

As applied, all of the above benchmarks ceased upon Cabiles' assumption of duties with Intel HK on February 1, 2007. Intel HK became the new employer. It provided Cabiles his compensation. Cabiles then became subject to Hong Kong labor laws, and necessarily, the rights appurtenant thereto, including the right of Intel HK to fire him on available grounds. Lastly, Intel HK had control and supervision over him as its new Finance Manager. Evidently, Intel Phil. no longer had any control over him.

Although in various instances, his move to Hong Kong was referred to as an "assignment," it bears stressing that it was categorized as a "permanent transfer." In *Sta. Maria v. Lopez,* [29] the Court held that "*no permanent transfer can take place*

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[27] *Id.* at 853.

[28] *Victorio Meteor v. Creative Creatures, Inc.,* G.R. No. 171275, July 13, 2009, 592 SCRA 481, 492.

[29] G.R. No. L-30773, 18 February 1970, 31 SCRA 637.

unless the officer or employee is first removed from the position held, and then appointed to another position." Undoubtedly, Cabiles' decision to move to Hong Kong required the abandonment of his permanent position with Intel Phil. in order for him to assume a position in an entirely different company. Clearly, the "transfer" was more than just an assignment. It constituted a severance of Cabiles' relationship with Intel Phil., for the assumption of a position with a different employer, rank, compensation and benefits.

Hence, Cabiles' theory of secondment must fail.

The NLRC, however, was of the view that the transfer of Cabiles to Intel HK was similar to his assignments in Intel Chengdu and Intel Arizona.

The Court finds this conclusion baseless.

What distinguishes Intel Chengdu and Intel Arizona from Intel HK is the lack of intervention of Intel Phil. on the matter. In the two previous transfers, Intel Phil. remained as the principal employer while Cabiles was on a temporary assignment. By virtue of which, it still assumed responsibility for the payment of compensation and benefits due him. The assignment to Intel HK, on the other hand, was a permanent transfer and Intel Phil. never participated in any way in the process of his employment there. It was Cabiles himself who took the opportunity and the risk. If it were indeed similar to Intel Arizona and Intel Chengdu assignments, Intel Philippines would have had a say in it.

Release, Waiver and Quitclaim Valid
Terms Are Clear

Contrary to the conclusion affirmed by the CA, the Waiver executed by Cabiles was valid.

In *Goodrich Manufacturing Corporation, v. Ativo,*[30] the Court reiterated the standards that must be observed in determining whether a waiver and quitclaim had been validly executed:

[30] G.R. No. 188002, February 1, 2010, 611 SCRA 261, citing *Periquet v. NLRC,* 264 Phil. 1115, 1122 (1990).

Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. **It is only where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction.** But where it is shown that the person making the waiver did so voluntarily, with full understanding of what he was doing, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking.

In *Callanta v. National Labor Relations Commission*,[31] this Court ruled that:

It is highly unlikely and incredible for a man of petitioner's position and educational attainment to so easily succumb to private respondent company's alleged pressures without even defending himself nor demanding a final audit report before signing any resignation letter. Assuming that pressure was indeed exerted against him, there was no urgency for petitioner to sign the resignation letter. He knew the nature of the letter that he was signing, for as argued by respondent company, petitioner being "a man of high educational attainment and qualification, x x x he is expected to know the import of everything that he executes, whether written or oral.[32]

Here, the NLRC concluded in its February 9, 2011 Resolution[33] that the Waiver was executed merely to allow Intel Phil. to escape its obligation to pay the retirement benefits, thus, violative of law, morals, and public policy. The Court, however, sees no clear evidence in the records showing that Cabiles was constrained into signing the document. Also, it cannot be said that Cabiles did not fully understand the consequences of signing the Waiver. Being a person well-versed in matters of finance, it would have been impossible for him not to have comprehended the consequences of signing a waiver. Failing to see any evidence to warrant the disregard of the Waiver, the Court is unable to

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[31] G.R. No. 105083, August 20, 1993, 225 SCRA 526.

[32] *Id.* at 535.

[33] *Rollo*, pp. 403-415.

affirm the CA and, hence, declares it as valid and binding between Cabiles and Intel Phil..

Assuming the Waiver was valid, the NLRC contended that it could not be construed to cover the claims for the retirement pay because it had not yet accrued at the time the document was signed by Cabiles.

The Court finds Itself unable to agree.

The terms of the Waiver are clear:

> I, Jeremias P. Cabiles, Filipino, of legal age and a resident of xxx hereby acknowledge receipt from Intel Technology Philippines, Inc. (the Company) the amount of xxx, **in full and complete settlement of all benefits due me** by reason of my lawful separation from the Company effective February 1, 2007.
>
> In consideration of the foregoing:
>
> 1. I **release, remise and forever discharge** the Company, its successors-in-interest, its stockholders, its officers, directors, agents or employees from any action, sum of money, damages, claims and demands whatsoever, **which in law or in equity I ever had, now have, or which I, my heirs, successors and assigns hereafter may have** by reason of any matter, cause or thing whatsoever, up to the time of these presents, the intention thereof being to completely and absolutely release the Company, its successors-in-interest, xxx from all liabilities arising wholly, partially, or directly from my employment with the Company.
>
> xxx xxx xxx
>
> 5. I acknowledge that **I have received all amounts that are now or in the future** may be due me from the Company. I also acknowledge that during the entire period of my employment with the Company, I received or was paid all compensation, benefits and privileges, to which I am entitled under all laws and policies of the Company by reason of my past employment and/or engagement therewith, and if I hereafter be found in any manner to be entitled to any amount, the aforementioned monetary amount is a full and final satisfaction of any and all such undisclosed claims. (Emphasis supplied)[34]

[34] *Id.* at 211.

Suffice it to state that nothing is clearer than the words used in the Waiver duly signed by Cabiles – that all claims, in the present and in the future, were waived in consideration of his receipt of the amount of ₱165,857.62. Because the waiver included all present and future claims, the non-accrual of benefits cannot be used as a basis in awarding retirement benefits to him.

Lastly, even if the Court assumes that the Waiver was invalid, Cabiles nonetheless remains disqualified as a recipient of retirement benefits because, as previously discussed, the ten-year minimum requirement was not satisfied on account of his early resignation.

Cabiles is not entitled to the Retirement Benefits

Having effectively resigned before completing his 10th year anniversary with Intel Phil. and after having validly waived all the benefits due him, if any, Cabiles is hereby declared ineligible to receive the retirement pay pursuant to the retirement policy of Intel Phil.

For that reason, Cabiles must return all the amounts he received from Intel Phil. pursuant to the Writ of Execution issued by the NLRC, dated September 19, 2011.

WHEREFORE, the petition is **GRANTED**. The assailed October 28, 2011 and February 3, 2012 Resolutions of the Court of Appeals are hereby **REVERSED** and **SET ASIDE**.

Respondent Jeremias P. Cabiles is ordered to make restitution to petitioner Intel Technology Philippines Inc. for whatever amounts he received pursuant to the Writ of Execution issued by the National Labor Relations Commission, dated September 19, 2011.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad and *Leonen, JJ.*, concur.

FIRST DIVISION

[G.R. No. 201298. February 5, 2014]

RAUL C. COSARE, *petitioner, vs.* **BROADCOM ASIA, INC. and DANTE AREVALO,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; INTRA-CORPORATE CONTROVERSY; FALLS WITHIN THE JURISDICTION OF REGULAR COURTS; RELATIONSHIPS INVOLVED IN AN INTRA-CORPORATE CONTROVERSY.—** An intra-corporate controversy, which falls within the jurisdiction of regular courts, has been regarded in its broad sense to pertain to disputes that involve any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates, themselves.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; A DISPUTE INVOLVING A CHARGE OF ILLEGAL DISMISSAL FALLS UNDER THE JURISDICTION OF THE LABOR ARBITER.—** Settled jurisprudence, however, qualifies that when the dispute involves a charge of illegal dismissal, the action may fall under the jurisdiction of the LAs upon whose jurisdiction, as a rule, falls termination disputes and claims for damages arising from employer-employee relations as provided in Article 217 of the Labor Code. Consistent with this jurisprudence, the mere fact that Cosare was a stockholder and an officer of Broadcom at the time the subject controversy developed failed to necessarily make the case an intra-corporate dispute.

3. **ID.; ID.; ID.; A COMPLAINT FOR ILLEGAL DISMISSAL FILED BY AN OFFICER WHO IS NOT CLASSIFIED AS A CORPORATE OFFICER IS COGNIZABLE BY THE LABOR ARBITER.—** In *Matling Industrial and Commercial Corporation v. Coros*, the Court distinguished between a

"regular employee" and a "corporate officer" for purposes of establishing the true nature of a dispute or complaint for illegal dismissal and determining which body has jurisdiction over it. Succinctly, it was explained that "[t]he determination of whether the dismissed officer was a regular employee or corporate officer unravels the conundrum" of whether a complaint for illegal dismissal is cognizable by the LA or by the RTC. "In case of the regular employee, the LA has jurisdiction; otherwise, the RTC exercises the legal authority to adjudicate. Applying the foregoing to the present case, the LA had the original jurisdiction over the complaint for illegal dismissal because Cosare, although an officer of Broadcom for being its AVP for Sales, was not a "corporate officer" as the term is defined by law.

4. MERCANTILE LAW; CORPORATION CODE; PRIVATE CORPORATIONS; INTRA-CORPORATE DISPUTE; WHEN THE OFFICER CLAIMING TO HAVE BEEN ILLEGALLY DISMISSED IS CLASSIFIED AS A CORPORATE OFFICER, THE ISSUE IS DEEMED AN INTRA-CORPORATE DISPUTE WHICH FALLS WITHIN THE JURISDICTION OF THE TRIAL COURTS.— [T]here are two circumstances which must concur in order for an individual to be considered a corporate officer, as against an ordinary employee or officer, namely: (1) the *creation* of the position is under the corporation's charter or by-laws; and (2) the *election* of the officer is by the directors or stockholders. It is only when the officer claiming to have been illegally dismissed is classified as such corporate officer that the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts.

5. ID.; ID.; ID.; ID.; DETERMINED BY THE STATUS OR RELATIONSHIP OF THE PARTIES AND THE NATURE OF THE QUESTION THAT IS THE SUBJECT OF THE CONTROVERSY.— [T]he mere fact that Cosare was a stockholder of Broadcom at the time of the case's filing did not necessarily make the action an intra-corporate controversy. "[N]ot all conflicts between the stockholders and the corporation are classified as intra-corporate. There are other facts to consider in determining whether the dispute involves corporate matters as to consider them as intra-corporate controversies." Time and again, the Court has ruled that in determining the existence of an intra-corporate dispute, the status or relationship

of the parties **and** the nature of the question that is the subject of the controversy must be taken into account. Considering that the pending dispute particularly relates to Cosare's rights and obligations as a regular officer of Broadcom, instead of as a stockholder of the corporation, the controversy cannot be deemed intra-corporate.

6. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; WHEN PRESENT.— "[C]onstructive dismissal occurs when there is **cessation of work** because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit."

7. ID.; ID.; ID.; JUST CAUSES; ABANDONMENT; ELEMENTS; NOT PRESENT IN CASE AT BAR.— "Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. To constitute abandonment of work, two elements must concur: '(1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.'" Cosare's failure to report to work beginning April 1, 2009 was neither voluntary nor indicative of an intention to sever his employment with Broadcom. It was illogical to be requiring him to reportfor work, and imputing fault when he failed to do so after he was specifically denied access to all of the company's assets.

8. ID.; ID.; ID.; AN ILLEGALLY OR CONSTRUCTIVELY DISMISSED EMPLOYEE IS ENTITLED TO EITHER REINSTATEMENT, IF VIABLE, OR SEPARATION PAY, IF REINSTATEMENT IS NO LONGER VIABLE AND BACKWAGES.— In *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez,* the Court reiterated that an illegally or constructively dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages.

9. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARDED WHEN THE EMPLOYER ACTED IN BAD FAITH AND IN

WANTON, OPPRESSIVE AND MALEVOLENT MANNER IN DISMISSING ITS EMPLOYEE.— The award of exemplary damages was x x x justified given the NLRC's finding that the respondents acted in bad faith and in a wanton, oppressive and malevolent manner when they dismissed Cosare. It is also by reason of such bad faith that Arevalo was correctly declared solidarily liable for the monetary awards.

APPEARANCES OF COUNSEL

Lawyers Advocate Circle for petitioner.
Batino Law Offices for respondents.

D E C I S I O N

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, which assails the Decision[2] dated November 24, 2011 and Resolution[3] dated March 26, 2012 of the Court of Appeals (CA) in CA-G.R. SP. No. 117356, wherein the CA ruled that the Regional Trial Court (RTC), and not the Labor Arbiter (LA), had the jurisdiction over petitioner Raul C. Cosare's (Cosare) complaint for illegal dismissal against Broadcom Asia, Inc. (Broadcom) and Dante Arevalo (Arevalo), the President of Broadcom (respondents).

The Antecedents

The case stems from a complaint[4] for constructive dismissal, illegal suspension and monetary claims filed with the National Capital Region Arbitration Branch of the National Labor Relations Commission (NLRC) by Cosare against the respondents.

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[1] *Rollo*, pp. 14-42.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Franchito N. Diamante, concurring; *id.* at 44-65.

[3] *Id.* at 67-69.

[4] *Id.* at 70.

Cosare claimed that sometime in April 1993, he was employed as a salesman by Arevalo, who was then in the business of selling broadcast equipment needed by television networks and production houses. In December 2000, Arevalo set up the company Broadcom, still to continue the business of trading communication and broadcast equipment. Cosare was named an incorporator of Broadcom, having been assigned 100 shares of stock with par value of ₱1.00 per share.[5] In October 2001, Cosare was promoted to the position of Assistant Vice President for Sales (AVP for Sales) and Head of the Technical Coordination, having a monthly basic net salary and average commissions of ₱18,000.00 and ₱37,000.00, respectively.[6]

Sometime in 2003, Alex F. Abiog (Abiog) was appointed as Broadcom's Vice President for Sales and thus, became Cosare's immediate superior. On March 23, 2009, Cosare sent a confidential memo[7] to Arevalo to inform him of the following anomalies which were allegedly being committed by Abiog against the company: (a) he failed to report to work on time, and would immediately leave the office on the pretext of client visits; (b) he advised the clients of Broadcom to purchase camera units from its competitors, and received commissions therefor; (c) he shared in the "under the-table dealings" or "confidential commissions" which Broadcom extended to its clients' personnel and engineers; and (d) he expressed his complaints and disgust over Broadcom's uncompetitive salaries and wages and delay in the payment of other benefits, even in the presence of office staff. Cosare ended his memo by clarifying that he was not interested in Abiog's position, but only wanted Arevalo to know of the irregularities for the corporation's sake.

Apparently, Arevalo failed to act on Cosare's accusations. Cosare claimed that he was instead called for a meeting by Arevalo on March 25, 2009, wherein he was asked to tender his resignation in exchange for "financial assistance" in the

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[5] *Id.* at 45, 102.

[6] *Id.* at 45.

[7] *Id.* at 120-121.

amount of ₱300,000.00.[8] Cosare refused to comply with the directive, as signified in a letter[9] dated March 26, 2009 which he sent to Arevalo.

On March 30, 2009, Cosare received from Roselyn Villareal (Villareal), Broadcom's Manager for Finance and Administration, a memo[10] signed by Arevalo, charging him of serious misconduct and willful breach of trust, and providing in part:

1. A confidential memo was received from the VP for Sales informing me that you had directed, or at the very least tried to persuade, a customer to purchase a camera from another supplier. Clearly, this action is a gross and willful violation of the trust and confidence this company has given to you being its AVP for Sales and is an attempt to deprive the company of income from which you, along with the other employees of this company, derive your salaries and other benefits.x x x.

2. A company vehicle assigned to you with plate no. UNV 402 was found abandoned in another place outside of the office without proper turnover from you to this office which had assigned said vehicle to you. The vehicle was found to be inoperable and in very bad condition, which required that the vehicle be towed to a nearby auto repair shop for extensive repairs.

3. You have repeatedly failed to submit regular sales reports informing the company of your activities within and outside of company premises despite repeated reminders. However, it has been observed that you have been both frequently absent and/or tardy without proper information to this office or your direct supervisor, the VP for Sales Mr. Alex Abiog, of your whereabouts.

4. You have been remiss in the performance of your duties as a Sales officer as evidenced by the fact that you have not recorded any sales for the past immediate twelve (12) months. This was inspite of the fact that my office decided to relieve

[8] *Id.* at 193.

[9] *Id.* at 122.

[10] *Id.* at 123.

> you of your duties as technical coordinator between Engineering and Sales since June last year so that you could focus and concentrate [on] your activities in sales.[11]

Cosare was given forty-eight (48) hours from the date of the memo within which to present his explanation on the charges. He was also "suspended from having access to any and all company files/records and use of company assets effective immediately."[12] Thus, Cosare claimed that he was precluded from reporting for work on March 31, 2009, and was instead instructed to wait at the office's receiving section. Upon the specific instructions of Arevalo, he was also prevented by Villareal from retrieving even his personal belongings from the office.

On April 1, 2009, Cosare was totally barred from entering the company premises, and was told to merely wait outside the office building for further instructions. When no such instructions were given by 8:00 p.m., Cosare was impelled to seek the assistance of the officials of *Barangay* San Antonio, Pasig City, and had the incident reported in the *barangay* blotter.[13]

On April 2, 2009, Cosare attempted to furnish the company with a memo[14] by which he addressed and denied the accusations cited in Arevalo's memo dated March 30, 2009. The respondents refused to receive the memo on the ground of late filing, prompting Cosare to serve a copy thereof by registered mail. The following day, April 3, 2009, Cosare filed the subject labor complaint, claiming that he was constructively dismissed from employment by the respondents. He further argued that he was illegally suspended, as he placed no serious and imminent threat to the life or property of his employer and co-employees.[15]

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[11] *Id.*

[12] *Id.*

[13] *Id.* at 50-51, 194.

[14] *Id.* at 125-127.

[15] *Id.* at 54.

In refuting Cosare's complaint, the respondents argued that Cosare was neither illegally suspended nor dismissed from employment. They also contended that Cosare committed the following acts inimical to the interests of Broadcom: (a) he failed to sell any broadcast equipment since the year 2007; (b) he attempted to sell a Panasonic HMC 150 Camera which was to be sourced from a competitor; and (c) he made an unauthorized request in Broadcom's name for its principal, Panasonic USA, to issue an invitation for Cosare's friend, one Alex Paredes, to attend the National Association of Broadcasters' Conference in Las Vegas, USA.[16] Furthermore, they contended that Cosare abandoned his job[17] by continually failing to report for work beginning April 1, 2009, prompting them to issue on April 14, 2009 a memorandum[18] accusing Cosare of absence without leave beginning April 1, 2009.

The Ruling of the LA

On January 6, 2010, LA Napoleon M. Menese (LA Menese) rendered his Decision[19] dismissing the complaint on the ground of Cosare's failure to establish that he was dismissed, constructively or otherwise, from his employment. For the LA, what transpired on March 30, 2009 was merely the respondents' issuance to Cosare of a show-cause memo, giving him a chance to present his side on the charges against him. He explained:

> It is obvious that [Cosare] DID NOT wait for respondents' action regarding the charges leveled against him in the show-cause memo. What he did was to pre-empt that action by filing this complaint just a day after he submitted his written explanation. Moreover, by specifically seeking payment of "***Separation Pay***" instead of reinstatement, [Cosare's] motive for filing this case becomes more evident.[20]

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[16] *Id.* at 136-137.

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

[18] *Id.* at 152.

[19] *Id.* at 182-188; erroneously dated January 6, 2009.

[20] *Id.* at 187.

It was also held that Cosare failed to substantiate by documentary evidence his allegations of illegal suspension and non-payment of allowances and commissions.

Unyielding, Cosare appealed the LA decision to the NLRC.

The Ruling of the NLRC

On August 24, 2010, the NLRC rendered its Decision[21] reversing the Decision of LA Menese. The dispositive portion of the NLRC Decision reads:

> **WHEREFORE**, premises considered, the DECISION is REVERSED and the Respondents are found guilty of Illegal Constructive Dismissal. Respondents BROADCOM ASIA[,] INC. and Dante Arevalo are ordered to pay [Cosare's] backwages, and separation pay, as well as damages, in the total amount of [₱]1,915,458.33, per attached Computation.
>
> **SO ORDERED**.[22]

In ruling in favor of Cosare, the NLRC explained that "due weight and credence is accorded to [Cosare's] contention that he was constructively dismissed by Respondent Arevalo when he was asked to resign from his employment."[23] The fact that Cosare was suspended from using the assets of Broadcom was also inconsistent with the respondents' claim that Cosare opted to abandon his employment.

Exemplary damages in the amount of ₱100,000.00 was awarded, given the NLRC's finding that the termination of Cosare's employment was effected by the respondents in bad faith and in a wanton, oppressive and malevolent manner. The claim for unpaid commissions was denied on the ground of the failure to include it in the prayer of pleadings filed with the LA and in the appeal.

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[21] Penned by Commissioner Nieves E. Vivar-De Castro, with Presiding Commissioner Benedicto R. Palacol and Commissioner Isabel G. Panganiban-Ortiguerra, concurring; *id.* at 189-203.

[22] *Id.* at 202.

[23] *Id.* at 200.

The respondents' motion for reconsideration was denied.[24] Dissatisfied, they filed a petition for *certiorari* with the CA founded on the following arguments: (1) the respondents did not have to prove just cause for terminating the employment of Cosare because the latter's complaint was based on an alleged constructive dismissal; (2) Cosare resigned and was thus not dismissed from employment; (3) the respondents should not be declared liable for the payment of Cosare's monetary claims; and (4) Arevalo should not be held solidarily liable for the judgment award.

In a manifestation filed by the respondents during the pendency of the CA appeal, they raised a new argument, *i.e.*, the case involved an intra-corporate controversy which was within the jurisdiction of the RTC, instead of the LA.[25] They argued that the case involved a complaint against a corporation filed by a stockholder, who, at the same time, was a corporate officer.

The Ruling of the CA

On November 24, 2011, the CA rendered the assailed Decision[26] granting the respondents' petition. It agreed with the respondents' contention that the case involved an intra-corporate controversy which, pursuant to Presidential Decree No. 902-A, as amended, was within the exclusive jurisdiction of the RTC. It reasoned:

> Record shows that [Cosare] was indeed a stockholder of [Broadcom], and that he was listed as one of its directors. Moreover, he held the position of [AVP] for Sales which is listed as a corporate office. Generally, the president, vice-president, secretary or treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation. However, it bears mentioning that under Section 25 of the Corporation Code, the Board of Directors of [Broadcom] is allowed to appoint such other officers as it may deem necessary. Indeed, [Broadcom's] By-Laws provides:

[24] *Id.* at 56.

[25] *Id.* at 57.

[26] *Id.* at 44-65.

Article IV

Officer

Section 1. Election / Appointment – Immediately after their election, the Board of Directors shall formally organize by electing the President, the Vice-President, the Treasurer, and the Secretary at said meeting.

The Board, may, from time to time, appoint such other officers as it may determine to be necessary or proper. x x x

We hold that [the respondents] were able to present substantial evidence that **[Cosare] indeed held a corporate office**, as evidenced by the General Information Sheet which was submitted to the Securities and Exchange Commission (SEC) on October 22, 2009.[27] (Citations omitted and emphasis supplied)

Thus, the CA reversed the NLRC decision and resolution, and then entered a new one dismissing the labor complaint on the ground of lack of jurisdiction, finding it unnecessary to resolve the main issues that were raised in the petition. Cosare filed a motion for reconsideration, but this was denied by the CA *via* the Resolution[28] dated March 26, 2012. Hence, this petition.

The Present Petition

The pivotal issues for the petition's full resolution are as follows: (1) whether or not the case instituted by Cosare was an intra-corporate dispute that was within the original jurisdiction of the RTC, and not of the LAs; and (2) whether or not Cosare was constructively and illegally dismissed from employment by the respondents.

The Court's Ruling

The petition is impressed with merit.

Jurisdiction over the controversy

As regards the issue of jurisdiction, the Court has determined that contrary to the ruling of the CA, it is the LA, and not the

[27] *Id.* at 63-64.

[28] *Id.* at 67-69.

regular courts, which has the original jurisdiction over the subject controversy. An intra-corporate controversy, which falls within the jurisdiction of regular courts, has been regarded in its broad sense to pertain to disputes that involve any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates, themselves.[29] Settled jurisprudence, however, qualifies that when the dispute involves a charge of illegal dismissal, the action may fall under the jurisdiction of the LAs upon whose jurisdiction, as a rule, falls termination disputes and claims for damages arising from employer-employee relations as provided in Article 217 of the Labor Code. Consistent with this jurisprudence, the mere fact that Cosare was a stockholder and an officer of Broadcom at the time the subject controversy developed failed to necessarily make the case an intra-corporate dispute.

In *Matling Industrial and Commercial Corporation v. Coros*,[30] the Court distinguished between a "regular employee" and a "corporate officer" for purposes of establishing the true nature of a dispute or complaint for illegal dismissal and determining which body has jurisdiction over it. Succinctly, it was explained that "[t]he determination of whether the dismissed officer was a regular employee or corporate officer unravels the conundrum" of whether a complaint for illegal dismissal is cognizable by the LA or by the RTC. "In case of the regular employee, the LA has jurisdiction; otherwise, the RTC exercises the legal authority to adjudicate.[31]

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[29] *Go v. Distinction Properties Development and Construction, Inc.*, G.R. No. 194024, April 25, 2012, 671 SCRA 461, 479-480, citing *Yujuico v. Quiambao*, 542 Phil. 236, 247 (2007).

[30] G.R. No. 157802, October 13, 2010, 633 SCRA 12.

[31] *Id.* at 15.

Applying the foregoing to the present case, the LA had the original jurisdiction over the complaint for illegal dismissal because Cosare, although an officer of Broadcom for being its AVP for Sales, was not a "corporate officer" as the term is defined by law. We emphasized in *Real v. Sangu Philippines, Inc.*[32] the definition of corporate officers for the purpose of identifying an intra-corporate controversy. Citing *Garcia v. Eastern Telecommunications Philippines, Inc.*,[33] we held:

" 'Corporate officers' in the context of Presidential Decree No. 902-A are those officers of the corporation who are **given that character by the Corporation Code or by the corporation's by-laws**. There are three specific officers whom a corporation must have under Section 25 of the Corporation Code. These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws."[34] (Emphasis ours)

In *Tabang v. NLRC*,[35] the Court also made the following pronouncement on the nature of corporate offices:

It has been held that an "office" is created by the charter of the corporation and the officer is elected by the directors and stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.[36] (Citations omitted)

As may be deduced from the foregoing, there are two circumstances which must concur in order for an individual to be considered a corporate officer, as against an ordinary employee or officer, namely: (1) the *creation* of the position is under the

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[32] G.R. No. 168757, January 19, 2011, 640 SCRA 67.

[33] G.R. No. 173115, April 16, 2009, 585 SCRA 450, 468.

[34] *Supra* note 32, at 83-84.

[35] 334 Phil. 424 (1997).

[36] *Id.* at 429.

corporation's charter or by-laws; and (2) the *election* of the officer is by the directors or stockholders. It is only when the officer claiming to have been illegally dismissed is classified as such corporate officer that the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts.

To support their argument that Cosare was a corporate officer, the respondents referred to Section 1, Article IV of Broadcom's by-laws, which reads:

ARTICLE IV
OFFICER

Section 1. Election / Appointment – Immediately after their election, the Board of Directors shall formally organize by electing the President, the Vice-President, the Treasurer, and the Secretary at said meeting.

The Board may, from time to time, appoint such other officers as it may determine to be necessary or proper. Any two (2) or more compatible positions may be held concurrently by the same person, except that no one shall act as President and Treasurer or Secretary at the same time.[37] (Emphasis ours)

This was also the CA's main basis in ruling that the matter was an intra-corporate dispute that was within the trial courts' jurisdiction.

The Court disagrees with the respondents and the CA. As may be gleaned from the aforequoted provision, the only officers who are specifically listed, and thus with offices that are created under Broadcom's by-laws are the following: the President, Vice-President, Treasurer and Secretary. Although a blanket authority provides for the Board's appointment of such other officers as it may deem necessary and proper, the respondents failed to sufficiently establish that the position of AVP for Sales was created by virtue of an act of Broadcom's board, and that Cosare was specifically elected or appointed to such position by the directors. No board resolutions to establish such facts form part of the case records. Further, it was held in *Marc*

[37] *Rollo*, p. 110.

II Marketing, Inc. v. Joson[38] that an enabling clause in a corporation's by-laws empowering its board of directors to create additional officers, even with the subsequent passage of a board resolution to that effect, cannot make such position a corporate office. The board of directors has no power to create other corporate offices without first amending the corporate by-laws so as to include therein the newly created corporate office.[39] "To allow the creation of a corporate officer position by a simple inclusion in the corporate by-laws of an enabling clause empowering the board of directors to do so can result in the circumvention of that constitutionally well-protected right [of every employee to security of tenure]."[40]

The CA's heavy reliance on the contents of the General Information Sheets,[41] which were submitted by the respondents during the appeal proceedings and which plainly provided that Cosare was an "officer" of Broadcom, was clearly misplaced. The said documents could neither govern nor establish the nature of the office held by Cosare and his appointment thereto. Furthermore, although Cosare could indeed be classified as an officer as provided in the General Information Sheets, his position could only be deemed a regular office, and not a corporate office as it is defined under the Corporation Code. Incidentally, the Court noticed that although the Corporate Secretary of Broadcom, Atty. Efren L. Cordero, declared under oath the truth of the matters set forth in the General Information Sheets, the respondents failed to explain why the General Information Sheet officially filed with the Securities and Exchange Commission in 2011 and submitted to the CA by the respondents still indicated Cosare as an AVP for Sales, when among their defenses in the charge of illegal dismissal, they asserted that Cosare had severed his relationship with the corporation since the year 2009.

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[38] G.R. No. 171993, December 12, 2011, 662 SCRA 35.

[39] *Id.* at 54.

[40] *Id.* at 55, citing *Matling Industrial and Commercial Corporation v. Coros*, *supra* note 30, at 27.

[41] *Rollo*, pp. 275-292.

Finally, the mere fact that Cosare was a stockholder of Broadcom at the time of the case's filing did not necessarily make the action an intra- corporate controversy. "[N]ot all conflicts between the stockholders and the corporation are classified as intra-corporate. There are other facts to consider in determining whether the dispute involves corporate matters as to consider them as intra-corporate controversies."[42] Time and again, the Court has ruled that in determining the existence of an intra-corporate dispute, the status or relationship of the parties **and** the nature of the question that is the subject of the controversy must be taken into account.[43] Considering that the pending dispute particularly relates to Cosare's rights and obligations as a regular officer of Broadcom, instead of as a stockholder of the corporation, the controversy cannot be deemed intra-corporate. This is consistent with the "controversy test" explained by the Court in *Reyes v. Hon. RTC, Br. 142*,[44] to wit:

> Under the nature of the controversy test, the *incidents* of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.[45] (Citation omitted)

It bears mentioning that even the CA's finding[46] that Cosare was a director of Broadcom when the dispute commenced was

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[42] *Real v. Sangu Philippines, Inc., supra* note 32, at 82.

[43] *Marc II Marketing, Inc. v. Joson, supra* note 38, at 51; *Real v. Sangu Philippines, Inc., supra* note 32, at 81; *Speed Distributing Corp. v. Court of Appeals,* 469 Phil. 739, 758 (2004).

[44] 583 Phil. 591 (2008)

[45] *Id.* at 608.

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

unsupported by the case records, as even the General Information Sheet of 2009 referred to in the CA decision to support such finding failed to provide such detail.

All told, it is then evident that the CA erred in reversing the NLRC's ruling that favored Cosare solely on the ground that the dispute was an intra-corporate controversy within the jurisdiction of the regular courts.

The charge of constructive dismissal

Towards a full resolution of the instant case, the Court finds it appropriate to rule on the correctness of the NLRC's ruling finding Cosare to have been illegally dismissed from employment.

In filing his labor complaint, Cosare maintained that he was constructively dismissed, citing among other circumstances the charges that were hurled and the suspension that was imposed against him *via* Arevalo's memo dated March 30, 2009. Even prior to such charge, he claimed to have been subjected to mental torture, having been locked out of his files and records and disallowed use of his office computer and access to personal belongings.[47] While Cosare attempted to furnish the respondents with his reply to the charges, the latter refused to accept the same on the ground that it was filed beyond the 48-hour period which they provided in the memo.

Cosare further referred to the circumstances that allegedly transpired subsequent to the service of the memo, particularly the continued refusal of the respondents to allow Cosare's entry into the company's premises. These incidents were cited in the CA decision as follows:

> On March 31, 2009, [Cosare] reported back to work again. He asked Villareal if he could retrieve his personal belongings, but the latter said that x x x Arevalo directed her to deny his request, so [Cosare] again waited at the receiving section of the office. On April 1, 2009, [Cosare] was not allowed to enter the office premises. He was asked to just wait outside of the Tektite (PSE) Towers, where [Broadcom] had its offices, for further instructions on how and when he could get his personal belongings. [Cosare] waited until 8 p.m.

[47] *Id.* at 86.

for instructions but none were given. Thus, [Cosare] sought the assistance of the officials of Barangay San Antonio, Pasig who advised him to file a labor or replevin case to recover his personal belongings. x x x.[48] (Citation omitted)

It is also worth mentioning that a few days before the issuance of the memo dated March 30, 2009, Cosare was allegedly summoned to Arevalo's office and was asked to tender his immediate resignation from the company, in exchange for a financial assistance of ₱300,000.00.[49] The directive was said to be founded on Arevalo's choice to retain Abiog's employment with the company.[50] The respondents failed to refute these claims.

Given the circumstances, the Court agrees with Cosare's claim of constructive and illegal dismissal. "[C]onstructive dismissal occurs when there is **cessation of work** because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit."[51] In *Dimagan v. Dacworks United, Incorporated*,[52] it was explained:

The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. Constructive dismissal is therefore a *dismissal in disguise*. The law recognizes and resolves this situation in favor of employees in order to protect their rights

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[48] *Id.* at 50-51.

[49] *Id.* at 48.

[50] *Id.* at 79.

[51] *The University of the Immaculate Conception v. National Labor Relations Commission*, G.R. No. 181146, January 26, 2011, 640 SCRA 608, 618-619, citing *La Rosa v. Ambassador Hotel*, G.R. No. 177059, March 13, 2009, 581 SCRA 340, 346-347.

[52] G.R. No. 191053, November 28, 2011, 661 SCRA 438.

and interests from the coercive acts of the employer.[53] (Citation omitted)

It is clear from the cited circumstances that the respondents already rejected Cosare's continued involvement with the company. Even their refusal to accept the explanation which Cosare tried to tender on April 2, 2009 further evidenced the resolve to deny Cosare of the opportunity to be heard prior to any decision on the termination of his employment. The respondents allegedly refused acceptance of the explanation as it was filed beyond the mere 48-hour period which they granted to Cosare under the memo dated March 30, 2009. However, even this limitation was a flaw in the memo or notice to explain which only further signified the respondents' discrimination, disdain and insensibility towards Cosare, apparently resorted to by the respondents in order to deny their employee of the opportunity to fully explain his defenses and ultimately, retain his employment. The Court emphasized in *King of Kings Transport, Inc. v. Mamac*[54] the standards to be observed by employers in complying with the service of notices prior to termination:

> [T]he **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis

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[53] *Id.* at 446.

[54] 553 Phil. 108 (2007).

for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.[55] (Citation omitted, underscoring ours, and emphasis supplied)

In sum, the respondents were already resolute on a severance of their working relationship with Cosare, notwithstanding the facts which could have been established by his explanations and the respondents' full investigation on the matter. In addition to this, the fact that no further investigation and final disposition appeared to have been made by the respondents on Cosare's case only negated the claim that they actually intended to first look into the matter before making a final determination as to the guilt or innocence of their employee. This also manifested from the fact that even before Cosare was required to present his side on the charges of serious misconduct and willful breach of trust, he was summoned to Arevalo's office and was asked to tender his immediate resignation in exchange for financial assistance.

The clear intent of the respondents to find fault in Cosare was also manifested by their persistent accusation that Cosare abandoned his post, allegedly signified by his failure to report to work or file a leave of absence beginning April 1, 2009. This was even the subject of a memo[56] issued by Arevalo to Cosare on April 14, 2009, asking him to explain his absence within 48 hours from the date of the memo. As the records clearly indicated, however, Arevalo placed Cosare under suspension beginning March 30, 2009. The suspension covered access to any and all company files/records and the use of the assets of the company, with warning that his failure to comply with the memo would be dealt with drastic management action. The charge of abandonment was inconsistent with this imposed suspension. "Abandonment is the deliberate and unjustified

[55] *Id.* at 115-116.

[56] *Rollo,* p. 152.

refusal of an employee to resume his employment. To constitute abandonment of work, two elements must concur: '(1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer- employee relationship manifested by some overt act.'"[57] Cosare's failure to report to work beginning April 1, 2009 was neither voluntary nor indicative of an intention to sever his employment with Broadcom. It was illogical to be requiring him to report for work, and imputing fault when he failed to do so after he was specifically denied access to all of the company's assets. As correctly observed by the NLRC:

[T]he Respondent[s] had charged [Cosare] of abandoning his employment beginning on April 1, 2009. However[,] the show-cause letter dated March 3[0], 2009 (Annex "F", ibid) suspended [Cosare] from using not only the equipment but the "assets" of Respondent [Broadcom]. This insults rational thinking because the Respondents tried to mislead us and make [it appear] that [Cosare] failed to report for work when they had in fact had [sic] placed him on suspension. x x x.[58]

Following a finding of constructive dismissal, the Court finds no cogent reason to modify the NLRC's monetary awards in Cosare's favor. In *Robinsons Galleria/Robinsons Supermarket Corporation v. Ranchez,*[59] the Court reiterated that an illegally or constructively dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages.[60] The award of exemplary damages was also justified given the NLRC's finding that the respondents acted in bad faith and in a wanton, oppressive and malevolent manner when they dismissed Cosare. It is also by

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[57] *Dimagan v. Dacworks United, Incorporated, supra* note 52, at 447, citing *Exodus International Construction Corporation v. Biscocho, et al.*, G.R. No. 166109, February 23, 2011, 644 SCRA 76.

[58] *Rollo*, p. 200.

[59] G.R. No. 177937, January 19, 2011, 640 SCRA 135.

[60] *Id.* at 144.

reason of such bad faith that Arevalo was correctly declared solidarily liable for the monetary awards.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 24, 2011 and Resolution dated March 26, 2012 of the Court of Appeals in CA-G.R. SP. No. 117356 are **SET ASIDE**. The Decision dated August 24, 2010 of the National Labor Relations Commission in favor of petitioner Raul C. Cosare is **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 205453. February 5, 2014]

UNITED TOURIST PROMOTIONS (UTP) and ARIEL D. JERSEY, *petitioners, vs.* **HARLAND B. KEMPLIN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION.— It is settled that Rule 45 limits us merely to the review of questions of law raised against the assailed CA decision. The Court is generally bound by the CA's factual findings, except only in some instances, among which is, when the said findings are contrary to those of the trial court or administrative body exercising quasi-judicial functions from which the action originated.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; NOTICE AND HEARING

REQUIREMENT; NOT COMPLIED WITH IN CASE AT BAR.— UTP's letter sent to Kemplin on July 30, 2009 is a lame attempt to comply with the twin notice requirement provided for in Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code. The charges against Kemplin were not clearly specified. While the letter stated that Kemplin's employment contract had expired, it likewise made general references to alleged criminal suits filed against him. One who reads the letter is inevitably bound to ask if Kemplin is being terminated due to the expiration of his contract, or by reason of the pendency of suits filed against him. Anent the pendency of criminal suits, the statement is substantially bare. Besides, an employee's guilt or innocence in a criminal case is not determinative of the existence of a just or authorized cause for his dismissal. The pendency of a criminal suit against an employee, does not, by itself, sufficiently establish a ground for an employer to terminate the former. It also bears stressing that the letter failed to categorically indicate which of the policies of UTP did Kemplin violate to warrant his dismissal from service. Further, Kemplin was never given the chance to refute the charges against him as no hearing and investigation were conducted. Corollarily, in the absence of a hearing and investigation, the existence of just cause to terminate Kemplin could not have been sufficiently established.

3. ID.; ID.; ID.; PAYMENT OF SEPARATION PAY; PROPER WHEN REINSTATEMENT IS NOT LIKELY TO CREATE AN EFFICIENT AND PRODUCTIVE WORK ENVIRONMENT; CASE AT BAR.— Considering that Kemplin's dismissal occurred in 2009, there is much room to doubt the viability, desirability and practicability of his reinstatement as UTP's President. Besides, as a consequence of the unsavory accusations hurled by the contending parties against each other, Kemplin's reinstatement is not likely to create an efficient and productive work environment, hence, prejudicial to business and all the persons concerned.

4. ID.; ID.; LABOR STANDARDS; 13TH MONTH BENEFIT; MANAGERIAL EMPLOYEES ARE NOT ENTITLED THERETO.— We likewise find the award of 13th month benefit to Kemplin as improper. x x x Kemplin, who had rendered his services as UTP's President, a managerial position, is clearly not entitled to be paid the 13th month benefit.

APPEARANCES OF COUNSEL

Yabut Yabut & Associates Law Firm for petitioners.
A.Q. Ancheta & Partners for respondent.

D E C I S I O N

REYES, *J.*:

United Tourist Promotions (UTP), a sole proprietorship business entity engaged in the printing and distribution of promotional brochures and maps for tourists, and its registered owner, Ariel D. Jersey (Jersey), are now before us with a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court to assail the Decision[2] rendered by the Court of Appeals (CA) on June 29, 2012 and the Resolution[3] thereafter issued on January 16, 2013 in CA-G.R. SP No. 118971. The assailed decision and resolution affirmed *in toto* the rulings of the Sixth Division of the National Labor Relations Commission (NLRC) and Labor Arbiter Leandro M. Jose (LA Jose) finding that Harland B. Kemplin (Kemplin) was illegally dismissed as President of UTP.

Antecedents

In 1995, Jersey, with the help of two American expatriates, Kemplin and the late Mike Dunne, formed UTP.

In 2002, UTP employed Kemplin to be its President for a period of five years, to commence on March 1, 2002 and to end on March 1, 2007, "renewable for the same period, subject to new terms and conditions."[4]

Kemplin continued to render his services to UTP even after his fixed term contract of employment expired. Records show

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[1] *Rollo*, pp. 3-26.

[2] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Amelita G. Tolentino and Ramon R. Garcia, concurring; *id.* at 29-39.

[3] *Id.* at 287.

[4] Please *see* Employment Contract, *id.* at 161-162.

that on May 12, 2009, Kemplin, signing as President of UTP, entered into advertisement agreements with Pizza Hut and M. Lhuillier.[5]

On July 30, 2009, UTP's legal counsel sent Kemplin a letter,[6] which, in part, reads:

> We would like to inform you that your Employment Contract had been expired since **March 1, 2007** and never been renewed. So[,] it is clear [that] you are no longer [an] employee as President of [UTP] considering the expiration of your employment contract. However, because of your past services to our client's company despite [the fact that] your service is no longer needed by his company[,] as token[,] he tolerated you to come in the office [and] as such[,] you were given monthly commissions with allowances.
>
> But because of your inhuman treatment x x x [of] the rank and file employees[,] which caused great damage and prejudices to the company as evidenced [by] those cases filed against you[,] specifically[:] (1) x x x ***for Grave Oral [T]hreat pending for Preliminary Investigation, Pasay City Prosecutor's Office*** x x x[;] (2) x x x ***for Summary Deportation[,] BID, Pasay City Prosecutor's Office***; and (3) x x x ***for Grave Coercion and Grave Threats***, we had no other recourse but to give you this notice to cease and desist from entering the premises of the main office[,] as well as the branch offices of [UTP] from receipt hereof for the protection and safety of the company[,] as well as to the employees and to avoid further great damages that you may cause to the company x x x.[7]

On August 10, 2009, Kemplin filed before Regional Arbitration Branch No. 111 of the NLRC a Complaint[8] against UTP and its officers, namely, Jersey, Lorena Lindo[9] and Larry Jersey,[10] for: (a) illegal dismissal; (b) non-payment of salaries, 13th month and separation pay, and retirement benefits; (c) payment of

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[5] *Id.* at 263-266.

[6] *Id.* at 159-160.

[7] *Id.*

[8] *Id.* at 149.

[9] Sales Manager

[10] Marketing Manager

actual, moral and exemplary damages and monthly commission of ₱200,000.00; and (d) recovery of the company car, which was forcibly taken from him, personal laptop, office paraphernalia and personal books.

In Kemplin's Position Paper,[11] which he filed before LA Jose, he claimed that even after the expiration of his employment contract on March 1, 2007, he rendered his services as President and General Manager of UTP. In December of 2008, he began examining the company's finances, with the end in mind of collecting from delinquent accounts of UTP's distributors. After having noted some accounting discrepancies, he sent e-mail messages to the other officers but he did not receive direct replies to his queries. Subsequently, on July 30, 2009, he received a notice from UTP's counsel ordering him to cease and desist from entering the premises of UTP offices.

UTP, on its part, argued that the termination letter sent to Kemplin on July 30, 2009 was based on (a) the expiration of the fixed term employment contract they had entered into, and (b) an employer's prerogative to terminate an employee, who commits criminal and illegal acts prejudicial to business. UTP alleged that Kemplin bad-mouthed, treated his co-workers as third class citizens, and called them "brown monkeys." Kemplin's presence in the premises of UTP was merely tolerated and he was given allowances due to humanitarian considerations.[12]

The LA's Decision

On June 25, 2010, LA Jose rendered a Decision,[13] the dispositive portion of which reads:

WHEREFORE, premises considered, the following findings are made:

1. [Kemplin] is found to be a regular employee;

2. [Kemplin] is adjudged to have been illegally dismissed even

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[11] *Rollo*, pp. 165-183.

[12] Please *see* UTP and Jersey's Position Paper, *id.* at 150-158.

[13] *Id.* at 103-113.

as [UTP and Jersey] are held liable therefor;

3. Consequently, [UTP and Jersey] are ordered to reinstate [Kemplin] to his former position without loss of seniority rights and other privileges, with backwages initially computed at this time at [₱]219,200.00;

4. The reinstatement aspect of this decision is immediately executory even as [UTP and Jersey] are enjoined to submit a report of compliance therewith within ten (10) days from receipt hereof;

5. [UTP and Jersey] are further ordered to pay [Kemplin] his salary for July 2009 of [₱]20,000.00 and 13th month pay for the year 2009 in the sum of [₱]20,000.00;

6. [UTP and Jersey] are assessed 10% attorney's fee of [₱]25,920.00 in favor of [Kemplin].

All other claims are dismissed for lack of merit.

SO ORDERED.[14]

LA Jose's ratiocinations are:

[Kemplin] was able to show that he was still officially connected with [UTP] as he signed in his capacity as President of [UTP] an (sic) advertisement agreement[s] with Pizza Hut and M. Lhuillier Phils. as late as May 12, 2009. This only goes to show that [UTP and Jersey's] theory of toleration has no basis in fact.

It would appear now, per record, that [Kemplin] was allowed to continue performing and suffered to work much beyond the expiration of his contract. Such being the case, [Kemplin's] fixed term employment contract was converted to a regular one under Art. 280 of the Labor Code, as amended (Viernes vs. NLRC, *et al.*, G.R. No. 108405, April 4, 2003).

[Kemplin's] tenure having now been converted to regular employment, he now enjoys security of tenure under Art. 279 of the Labor Code, as amended. Simply put, [Kemplin] may only be dismissed for cause and after affording him the procedural requirement of notice and hearing. Otherwise, his dismissal will be illegal.

Be that as it may, [UTP and Jersey] proceeded to argue that [Kemplin] was not illegally terminated, for his termination was according

[14] *Id.* at 112-113.

to Art. 282 of the Labor Code, as amended, *i.e.*, loss of trust and confidence allegedly for various and serious offenses x x x.

However, upon closer scrutiny, in trying to justify [Kemplin's] dismissal on the ground of loss of trust and confidence, [UTP and Jersey] failed to observe the procedural requirements of notice and hearing, or more particularly, the two-notice rule. It would appear that [UTP and Jersey's] x x x cease and desist letter compressed the two notices in one. Besides, the various and serious offenses alluded thereto were not legally established before [Kemplin's] separation. Ostensibly, [Kemplin] was not confronted with these offenses and given the opportunity to explain himself.

x x x [R]espondents miserably failed to discharge their *onus probandi*. Hence, illegal dismissal lies.

x x x x

The claim for non-payment of salary for July 2009 appears to be meritorious for failure of [UTP and Jersey] to prove payment thereof when they have the burden of proof to do so.

The same ruling applies to the claim for 13th month pay.

However, the claims for commissions, company car, laptop, office paraphernalia and personal books may not be given due course for failure of [Kemplin] to provide the specifics of his claims and/or sufficient basis thereof when the burden of proof is reposed in him.[15]

The Decision of the NLRC

On January 21, 2011, the NLRC affirmed LA Jose's Decision.[16] However, Lorena Lindo and Larry Jersey were expressly excluded from assuming liability for lack of proof of their involvement in Kemplin's dismissal. The NLRC declared:

[A]fter the expiration of [Kemplin's] fixed term employment, his employment from March 2, 2007 until his separation therefrom on July 30, 2009 is classified as regular pursuant to the provisions of Article 280 of the Labor Code, to wit:

ART. 280. ***Regular and casual employment.*** – The provisions of written agreement to the contrary notwithstanding and

[15] *Id.* at 110-112.

[16] Please *see* the NLRC's Decision, *id.* at 66-73.

> regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

The aforesaid Article 280 of the Labor Code, as amended, classifies employees into three (3) categories, namely: (1) regular employees or those whose work is necessary or desirable to the usual business of the employer; (2) project employees or those whose employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed [are] seasonal in nature and the employment is for the duration of the season; and (3) casual employees or those who are neither regular nor project employees. Regular employees are further classified into: (1) regular employees by nature of work; and (2) regular employees by years of service. The former refers to those employees who perform a particular activity which is necessary or desirable in the usual business or trade of the employer, regardless of their length of service; while the latter refers to those employees who have been performing the job, regardless of the nature thereof, for at least a year. (Rowell Industrial Corporation vs. Court of Appeals, G.R. No. 167714, March 7, 2007)

Considering that he continued working as President for UTP for about one (1) year and five (5) months and since [his] employment is not covered by another fixed term employment contract, [Kemplin's] employment after the expiration of his fixed term employment is already regular. Therefore, he is guaranteed security of tenure and can only be removed from service for cause and after compliance with due process. This is notwithstanding [UTP and Jersey's] insistence that

they merely tolerated [Kemplin's] "consultancy" for humanitarian reasons.

In termination cases, the employer bears the burden of proving that the dismissal of the employee is for a just or an authorized cause. Failure to dispose of the burden would imply that the dismissal is not lawful, and that the employee is entitled to reinstatement, back wages and accruing benefits. Moreover, dismissed employees are not required to prove their innocence of the employer's accusations against them. (San Miguel Corporation vs. National Labor Relations Commission and William L. Friend, Jr., G.R. No. 153983, May 26, 2009).

In this case, [UTP and Jersey] failed to prove the existence of just cause for his termination. Their allegation of loss of trust and confidence was raised only in their position paper and was never posed before [Kemplin] in order that he may be able to answer to the charge. In fact, he was merely told to cease and desist from entering the premises. He was never afforded due process as he was not notified of the charges against him and given the opportunity to be heard. Thus, there was never any proven just cause for [Kemplin's] termination, which makes it, therefore, illegal. x x x.[17] (Underscoring supplied)

The CA's Decision

On June 29, 2012, the CA rendered the herein assailed Decision[18] affirming the disquisitions of the LA and NLRC. The CA stated that:

[Kemplin's] presence for humanitarian reasons is purely self-serving and belied by the evidence on record. In fact, [UTP and Jersey's] alleged document denominated as *Revocation of Power of Attorney* (executed on November 24, 2008 or MORE THAN one year from the expiration of [Kemplin's] employment contract) will only confirm that [Kemplin] continued rendering work x x x beyond March 1, 2007. x x x.

x x x x x x x x x

Moreover, if indeed [Kemplin's] relationship with UTP after the expiration of the former's employment contract was based on [UTP

[17] *Id.* at 70-72.

[18] *Id.* at 29-39.

and Jersey's] mere tolerance, why then did [they] have to "dismiss" [Kemplin] based on alleged loss of trust and confidence? Clearly, [UTP's and Jersey's] allegation in their Position Paper (before LA Jose) that [Kemplin] was "*formally given notice of his termination as in* [sic] *indicated on the Notice of Termination Letter dated July 20, 2009,*" is already an indication, if not an admission, that [Kemplin] was, indeed, still in the employ of UTP albeit without a new or renewed contract of employment.

x x x x x x x x x

The validity of an employer's dismissal from service hinges on the satisfaction of the two substantive requirements for a lawful termination. x x x [T]he procedural aspect. And x x x the substantive aspect.

Records are bereft of any evidence that [Kemplin] was notified of the alleged causes for his possible dismissal. Neither was there any notice sent to him to afford him an opportunity to air his side and defenses. The alleged *Notice of Termination Letter* sent by [UTP and Jersey] miserably failed to comply with the twin-notice requirement under the law. x x x

x x x x x x x x x

We likewise sustain the finding of the [NLRC] that [UTP and Jersey] failed to prove the existence of just cause for [Kemplin's] termination. [UTP and Jersey's] allegation of loss of trust and confidence was raised only in their Position Paper and was never posed before [Kemplin] in order that he may be able to answer to the charge. It is a basic principle that in illegal dismissal cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for a just cause and failure to do so would necessarily mean that the dismissal is not justified.[19] (Citations omitted)

On January 16, 2013, the CA issued the herein assailed Resolution[20] denying UTP and Jersey's Motion for Reconsideration.[21]

Hence, the instant petition anchored on the following issues:

[19] *Id.* at 36-38.

[20] *Id.* at 287.

[21] *Id.* at 272-284.

Whether or not the CA erred when it:

(a) ruled that the termination of [Kemplin] was invalid or unjust;

(b) invalidated the termination of [Kemplin] for [UTP and Jersey's] failure to afford him due process of law;

(c) stated that the issue [of] "loss of trust and confidence" cannot be raised for the first time on appeal; and

(d) failed to apply the doctrine of strained relations in *lieu* of reinstatement.[22]

UTP and Jersey's Allegations

In support of the instant petition, UTP and Jersey reiterate their averments in the proceedings below. They likewise emphasize that Kemplin is a fugitive from justice since warrants of arrest for grave oral defamation and grave coercion[23] had been issued against him by the Metropolitan Trial Court (MTC) of Pasay City, and for qualified theft by the Regional Trial Court (RTC) of Angeles City. Kemplin's co-workers likewise complained about his alleged improprieties, lack of proper decorum, immorality and grave misconduct. Kemplin also blocked UTP's website and diverted all links towards his own site. Consequently, UTP lost both its customers and revenues. UTP, then, as an employer, has the right to exercise its management prerogative of terminating Kemplin, who has been committing acts inimical to business.[24]

Further, citing *Wenphil Corporation v. National Labor Relations Commission*,[25] UTP and Jersey argue that even if it were to be assumed that procedural due process was not observed in terminating Kemplin, still, the dismissal due to just

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

[23] Dated November 26, 2009 and March 10, 2010, respectively; *id.* at 117, 118.

[24] *Id.* at 16-19.

[25] 252 Phil. 73 (1989).

cause should not be invalidated. Instead, a fine should just be imposed as indemnity.[26]

UTP and Jersey also challenge the CA's holding that the court need not resolve the issue of loss of trust and confidence since it was only belatedly raised in the Position Paper filed before the LA. It is argued that the issue was timely raised before the proper forum and Kemplin had all the opportunity to contradict the charges against him, but he chose not to do so.[27]

UTP and Jersey likewise posit that a strained relationship between them and Kemplin had arisen due to the several criminal and civil cases they had filed and which are now pending against the latter. Hence, even if the CA were correct in holding that there was illegal dismissal, Kemplin's reinstatement is not advisable, practical and viable. A separation pay should just be paid instead.[28]

Kemplin's Comment

In Kemplin's Comment,[29] he sought the dismissal of the instant petition.

He insists that both procedural and substantive due process were absent when he was dismissed from service. Kemplin alleges that Jersey merely want to wrest the business away after the former initiated new checking and collection procedures relative to UTP's finances. Kemplin also laments that Jersey caused him to answer for baseless criminal offenses, for which no bail can be posted. Specifically, the indictment for qualified theft before the RTC of Angeles City involves a car registered in UTP's name, but which was actually purchased using Kemplin's money.[30]

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[26] *Rollo*, p. 21.

[27] *Id.* at 23-24.

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

[29] *Id.* at 317-327.

[30] *Id.* at 322-323; *see* also Acknowledgment Receipt dated March 22, 2005 issued to Kemplin by Asia International Auctioneers, Inc., *id.* at 232.

Kemplin further emphasizes that "the doctrine of strained relations should not be applied indiscriminately,"[31] especially where "the differences of the employer with the employee are neither personal nor physical[,] much less serious in nature[.]"[32]

This Court's Ruling

The instant petition is partially meritorious.

The first two issues raised are factual in nature, hence, beyond the ambit of a petition filed under Rule 45 of the Rules of Court.

It is settled that Rule 45 limits us merely to the review of questions of law raised against the assailed CA decision.[33] The Court is generally bound by the CA's factual findings, except only in some instances, among which is, when the said findings are contrary to those of the trial court or administrative body exercising quasi-judicial functions from which the action originated.[34]

In the case before us now, the LA, NLRC and CA uniformly ruled that Kemplin was dismissed *sans* substantive and procedural due process. While we need not belabor the first two factual issues presented herein, it bears stressing that we find the rulings of the appellate court and the labor tribunals as amply supported by substantial evidence.

Specifically, we note the advertisement agreements[35] with Pizza Hut and M. Lhuillier entered into by Kemplin, who signed

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[31] *Id.* at 325, citing *Capili v. National Labor Relations Commission*, 337 Phil. 210, 216 (1997).

[32] *Id.*, citing *Employees Association of the Phil. American Life Insurance, Co. (EMAPALICO) v. NLRC*, 276 Phil. 686 (1991).

[33] Please *see Mercado v. AMA Computer College-Parañaque City, Inc.*, G.R. No. 183572, April 13, 2010, 618 SCRA 218, 233, citing *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 343.

[34] Please *see AMA Computer College-East Rizal v. Ignacio*, G.R. No. 178520, June 23, 2009, 590 SCRA 633.

[35] *Rollo*, pp. 263-266.

the documents as President of UTP on May 12, 2009, or more than two years after the supposed expiration of his employment contract. They validate Kemplin's claim that he, indeed, continued to render his services as President of UTP well beyond March 2, 2007.

Moreover, in the letter[36] dated July 30, 2009, Kemplin was ordered to cease and desist from entering the premises of UTP.

In *Unilever Philippines, Inc. v. Maria Ruby M. Rivera*,[37] the Court laid down in detail the steps on how to comply with procedural due process in terminating an employee, *viz*:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

"(2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance

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[36] *Id.* at 159-160.

[37] G.R. No. 201701, June 3, 2013.

of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment. (Underlining ours)[38]

Prescinding from the above, UTP's letter sent to Kemplin on July 30, 2009 is a lame attempt to comply with the twin notice requirement provided for in Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code.[39]

The charges against Kemplin were not clearly specified. While the letter stated that Kemplin's employment contract had expired, it likewise made general references to alleged criminal suits filed against him.[40] One who reads the letter is inevitably bound to ask if Kemplin is being terminated due to

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[38] *Id.*, citing *King of Kings Transport, Inc. v. Mamac*, 553 Phil. 108, 115-116 (2007).

[39] Sec. 2. *Standard of due process: requirements of notice.* — In all cases of termination of employment, the following standards of due process shall be substantially observed.

I. For termination of employment based on just causes as defined in Article 282 of the Code:

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

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

(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

x x x x

[40] We note that the charge of qualified theft involving a car registered in UTP's name was made subsequent and not prior to Kemplin's dismissal.

the expiration of his contract, or by reason of the pendency of suits filed against him. Anent the pendency of criminal suits, the statement is substantially bare. Besides, an employee's guilt or innocence in a criminal case is not determinative of the existence of a just or authorized cause for his dismissal.[41] The pendency of a criminal suit against an employee, does not, by itself, sufficiently establish a ground for an employer to terminate the former.

It also bears stressing that the letter failed to categorically indicate which of the policies of UTP did Kemplin violate to warrant his dismissal from service. Further, Kemplin was never given the chance to refute the charges against him as no hearing and investigation were conducted. Corollarily, in the absence of a hearing and investigation, the existence of just cause to terminate Kemplin could not have been sufficiently established.

Kemplin should have been promptly apprised of the issue of loss of trust and confidence in him before and not after he was already dismissed.

UTP and Jersey challenge the CA's disquisition that it need not resolve the issue of loss of trust and confidence considering that the same was only raised in the Position Paper which they filed before LA Jose.

UTP and Jersey's stance is untenable.

In *Lawrence v. National Labor Relations Commission*,[42] the Court is emphatic that:

Considering that Lawrence has already been fired, the belated act of LEP in attempting to show a just cause in lieu of a nebulous one cannot be given a semblance of legality. The legal requirements of notice and hearing cannot be supplanted by the notice and hearing

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[41] *Chua v. National Labor Relations Commission,* G.R. No. 105775, February 8, 1993, 218 SCRA 545, 548-549, citing *Pepsi Cola Bottling Co. of the Phils. v. Guanzon*, 254 Phil. 578, 584 (1989).

[42] G.R. No. 87421, February 4, 1992, 205 SCRA 737.

in labor proceedings. The due process requirement in the dismissal process is different from the due process requirement in labor proceedings and both requirements must be separately observed x x x. Thus, LEP's method of "Fire the employee and let him explain later" is obviously not in accord with the mandates of law. x x x.[43]

Clearly then, UTP was not exempted from notifying Kemplin of the charges against him. The fact that Kemplin was apprised of his supposed offenses, through the Position Paper filed by UTP and Jersey before LA Jose, did not cure the defects attending his dismissal from employment.

While we agree with the LA, NLRC and CA's findings that Kemplin was illegally dismissed, grounds exist compelling us to modify the order of reinstatement and payment of 13th month benefit.

UTP and Jersey lament that the CA failed to apply the doctrine of strained relations to justify the award of separation pay in *lieu* of reinstatement.

APO Chemical Manufacturing Corporation v. Bides[44] is instructive anent the instances when separation pay and not reinstatement shall be ordered. Thus:

The Court is well aware that reinstatement is the rule and, for the exception of "strained relations" to apply, it should be proved that it is likely that, if reinstated, an atmosphere of antipathy and antagonism would be generated as to adversely affect the efficiency and productivity of the employee concerned.

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. Moreover, the doctrine

[43] *Id.* at 748.

[44] G.R. No. 186002, September 19, 2012, 681 SCRA 405.

of strained relations has been made applicable to cases where the employee decides not to be reinstated and demands for separation pay.[45] (Citations omitted)

Considering that Kemplin's dismissal occurred in 2009, there is much room to doubt the viability, desirability and practicability of his reinstatement as UTP's President. Besides, as a consequence of the unsavory accusations hurled by the contending parties against each other, Kemplin's reinstatement is not likely to create an efficient and productive work environment, hence, prejudicial to business and all the persons concerned.

We likewise find the award of 13th month benefit to Kemplin as improper.

In *Torres v. Rural Bank of San Juan, Inc.*,[46] we stated that:

> Being a managerial employee, the petitioner is not entitled to 13th month pay. Pursuant to Memorandum Order No. 28, as implemented by the Revised Guidelines on the Implementation of the 13th Month Pay Law dated November 16, 1987, managerial employees are exempt from receiving such benefit without prejudice to the granting of other bonuses, in lieu of the 13th month pay, to managerial employees upon the employer's discretion.[47] (Citation omitted)

Hence, Kemplin, who had rendered his services as UTP's President, a managerial position, is clearly not entitled to be paid the 13th month benefit.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. The Decision on June 29, 2012 and the Resolution thereafter issued on January 16, 2013 rendered by the Court of Appeals in CA-G.R. SP No. 118971 finding that **Harland B. Kemplin** was illegally dismissed are **AFFIRMED with MODIFICATIONS**. The award to Harland B. Kemplin of a 13th month benefit is hereby **DELETED**. In *lieu* of his reinstatement, he is **AWARDED SEPARATION PAY** to be

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[45] *Id.* at 412.

[46] G.R No. 184520, March 13, 2013, 693 SCRA 357.

[47] *Id.* at 382.

computed at the rate of one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one whole year to be reckoned from the time of his employment on March 1, 2002 until the finality of this Decision.[48] **United Tourist Promotions and Ariel D. Jersey** are further **ORDERED TO PAY** Harland B. Kemplin legal interest of six percent (6%) *per annum* of the total monetary awards computed from the finality of this Decision until full satisfaction thereof.[49]

The **Labor Arbiter** is hereby **DIRECTED** to re-compute the awards according to the above.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. P-13-3119. February 10, 2014]
(Formerly A.M. No. 12-9-68-MeTC)

EXECUTIVE JUDGE MA. OFELIA S. CONTRERAS-SORIANO, *complainant, vs.* **CLERK III LIZA D. SALAMANCA, METROPOLITAN TRIAL COURT, BRANCH 55, MALABON, CITY,** *respondent.*

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[48] Please *see Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186.

[49] Please *see S.C. Megaworld Construction and Development Corporation v. Engr. Luis U. Parada*, G.R. No. 183804, September 11, 2013.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; FAILURE TO ACCOUNT FOR THE MONEY RECEIVED FROM LITIGANTS, A CASE OF.— The OCA found that Salamanca received from the defendant in *Syjuco* the money intended as partial settlement of his civil obligation to the plaintiff therein; that the plaintiff in *Quiroga* also entrusted to Salamanca an amount intended as payment for legal fees; that she received money from the litigants and failed to turn over the same; that her omissions were discovered when satisfaction/execution of the cases could not be fully implemented; that when asked to explain by Judge Contreras-Soriano, she claimed to have lost the entrusted sums. x x x The actuations of Salamanca constitute dishonesty and conduct prejudicial to the best interest of the service.

2. ID.; ID.; ID.; DISHONESTY, DEFINED; CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE, DEFINED.— Dishonesty is defined as a disposition to lie, cheat, deceive, or defraud. It implies untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle on the part of the individual who failed to exercise fairness and straightforwardness in his or her dealings. Conduct prejudicial to the best interest of service, on the other hand, pertains to any conduct that is detrimental or derogatory or naturally or probably bringing about a wrong result; it refers to acts or omissions that violate the norm of public accountability and diminish - or tend to diminish - the people's faith in the Judiciary.

3. ID.; ID.; ID.; COURT PERSONNEL; THE STRINGENT ATTITUDE OF THE COURT TOWARDS CLERKS OF COURT WHO FAIL TO REMIT THEIR FIDUCIARY COLLECTIONS CANNOT BE APPLIED IN CASE AT BAR AS THE AMOUNTS MISAPPROPRIATED DID NOT ACQUIRE THE STATUS OF COURT FUNDS.— [I]t must be stressed that Salamanca's dishonesty does not consist of her failure to remit court funds because the money she received from the litigants did not acquire the status of court funds as no official receipt therefor was issued by her. The amounts misappropriated by Salamanca did

not prejudice the Court's coffers since they never formed part of the Judiciary's public funds. The partial settlement paid by the defendant in *Syjuco* intended for the plaintiff, but received and misappropriated by Salamanca, was technically private money. The payment for legal fees in *Quiroga* received and pocketed by Salamanca never attained the status of being part of court funds because no official receipt was issued therefor precisely because Salamanca is not the authorized court employee to receive such payments in behalf of and for the Judiciary. It was not her duty to receive payments and issue official receipts. It also does not appear that she was authorized or designated to do so. Since the subject amounts never formed part of the court funds, there was no duty on her part to remit/deposit the same with the Land Bank pursuant to Supreme Court Circular No. 50-95. For this reason, the stringent attitude of the Court towards clerks of court who fail to remit their fiduciary collections as mandated by Supreme Court Circular No. 50-95 is not applicable to Salamanca who did not hold a similar accountable position nor designated to act as such. This does not, however, mean that the offense attributable to Salamanca is any less grave. The Court finds that the factors, taken together, are not commensurate with the extreme penalty of dismissal recommended by the OCA. The Court is persuaded to temper its power to wield penalty to an erring employee and instead adopt a compassionate and humane view at Salamanca's transgressions. A similar leniency was espoused by the Court in analogous cases.

4. ID.; ID.; ID.; MUST RESPECT THE RIGHTS OF OTHERS AND REFRAIN FROM DOING ACTS CONTRARY TO PUBLIC SAFETY AND PUBLIC INTEREST.— While Salamanca's complained acts involved technically private money, the deceit she pulled off disrupted the public's faith in the integrity of the judiciary and its personnel. She failed to live up to the high ethical standards required of court employees thereby prejudicing the best interest of the administration of justice. Her conduct tarnished the image and integrity of her public office and violated Republic Act (R.A.) No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees, Section 4(c) of which commands that public officials and employees shall at all times respect the rights of others, and shall refrain from doing acts contrary to public safety and public interest.

5. ID.; ID.; ID.; DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PENALTY; MITIGATING FACTORS ARE CONSIDERED IN DETERMINING THE IMPOSABLE PENALTY.— Rule 10, Section 46, subsections (A)(1) and (B)(8) of the RRACCS classify serious dishonesty and conduct prejudicial to the best interest of the service as grave offenses. Serious dishonesty entail outright dismissal from service as punishment while conduct prejudicial to the best interest of the service is penalized with suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense. It can not be gainsaid that jurisprudence on administrative cases abounds with instances wherein the Court has refrained from imposing the actual penalties in view of mitigating circumstances. As a matter of fact, Rule 10, Section 48 of the RRACCS also allows the disciplining authority to consider mitigating factors in determining the imposable penalty for erring civil service employees. Certain conditions such as length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations have altered the implications of a respondent's infractions. Likewise, it has been a guiding principle for the Court that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners. It is beyond question that prior to this case, Salamanca has had an unblemished record for never having been charged with any administrative offense. She has devoted a considerable period of twenty (20) years of her life to government service. She also humbled herself and acknowledged her infractions and expressed feelings of remorse for her excesses and shortcomings. Also, it is clear from the records that the amount misappropriated by her is not significantly huge.

D E C I S I O N

REYES, *J.*:

This administrative complaint against Liza D. Salamanca (Salamanca), Clerk III of Metropolitan Trial Court (MeTC), Malabon City, Branch 55, was initiated by a letter[1] filed on September 5, 2012 before the Office of the Court Administrator (OCA) by Executive Judge Ma. Ofelia S. Contreras-Soriano (Judge Contreras-Soriano). The letter stated that Salamanca incurred unauthorized/unexplained absences from July 2 to 11, 2012, July 23 to 27, 2012 and August 15 to 22, 2012 without filing any application for leave of absence despite several reminders for her to do so. The letter further relayed other infractions committed by Salamanca with respect to two cases pending before the MeTC, *viz*: (1) she failed to account for and turn over the ₱12,000.00 she received for and on behalf of the plaintiff in *Jose M. Syjuco v. Dr. Joseph B. Morales* as partial settlement of the defendant's civil obligation; and (2) she failed to account for and turn over the payment for legal fees she received in the case of *Sopia Quiroga v. Annie Fermisa* which omission was only discovered when the writ of execution cannot be implemented as the receipt evidencing payment of legal fees was not attached to the records.

When asked to comment on the charges laid, Salamanca explained that her absences were due to her failing health caused by personal and professional problems and pressures. She cites that her heavy workload and weekly commute to her residence in Nueva Ecija greatly contributed to the deterioration of her health. She denied misappropriating the ₱12,000.00 intended for one litigant as partial settlement and claimed that she lost the same in the course of her routine transit to and from her workplace. She informed Judge Contreras-Soriano that she would just pay the same. She begged for compassion and humanitarian considerations in view of her 20 years of service in the judiciary and financial reliance on her by her family.[2]

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[1] *Rollo*, p. 1.

[2] *Id.* at 13-15.

Forthwith, the OCA conducted investigation the results of which yielded that Salamanca violated the Civil Service Rules and Administrative Circular Nos. 02-2007 and 14-2002 for unauthorized absences on separate occasions in 2011 and 2012, particularly on the following dates:

2011	**2012**
September 5, 2011	July 2 to 11, 2012
September 28 to 30, 2011	July 23 to 27, 2012
October 3 to 10, 2011	August 15 to 22, 2012
October 17 to 18, 2011	

Anent her failure to account for the money she received from litigants on two (2) separate occasions, the OCA found Salamanca's explanation doubtful and unacceptable. The OCA construed the two incidents to be illustrative of her propensity to receive money from litigants, despite lack of authority to do so, and then appropriating the amount collected for her personal use. She even concealed her misdeed until the same was discovered by Judge Contreras-Soriano when the writ of execution in *Quiroga* could not be implemented because the receipt for payment of legal fees was not attached to the records, despite Salamanca having actually received the payment. The OCA concluded that Salamanca's repeated failure to remit court funds and to give satisfactory explanation for such failure constitutes grave misconduct and dishonesty. Consequently, the extreme penalty of dismissal was recommended to be imposed on her.[3]

The Court's Ruling

The Court affirms the OCA's findings that the complained acts of Salamanca merit punishment albeit with clarification on the findings upon which such conclusion was premised, and with modification of the recommended imposable penalty.

The OCA found that Salamanca received from the defendant in *Syjuco* the money intended as partial settlement of his civil obligation to the plaintiff therein; that the plaintiff in *Quiroga*

[3] *Id.* at 21-27.

also entrusted to Salamanca an amount intended as payment for legal fees; that she received money from the litigants and failed to turn over the same; that her omissions were discovered when satisfaction/execution of the cases could not be fully implemented; that when asked to explain by Judge Contreras-Soriano, she claimed to have lost the entrusted sums.

As observed by the OCA, Salamanca's explanation for her omission to turn over the subject sums to their intended recipients is too flimsy to merit consideration. Her claim that she lost the subject amounts while commuting to and from her workplace is but a mere afterthought because her misdeeds were already discovered. There was also no justifiable reason for her to bring the money along at her every whereabouts because she should have turned it over to their proper recipients – the partial settlement amount to the plaintiff in *Syjuco* and the legal fees payment to the clerk of court. Thus, the repeated instances of deception she staged and the insolence with which they were carried out subdues and renders unnecessary any express admission that she misappropriated the subject sums of money for her personal use.

The actuations of Salamanca constitute dishonesty and conduct prejudicial to the best interest of the service. Dishonesty is defined as a disposition to lie, cheat, deceive, or defraud. It implies untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle on the part of the individual who failed to exercise fairness and straightforwardness in his or her dealings.[4]

Conduct prejudicial to the best interest of service, on the other hand, pertains to any conduct that is detrimental or derogatory or naturally or probably bringing about a wrong result;[5]

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[4] *Re: Deceitful Conduct of Ignacio S. del Rosario, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA*, A.M. No. 2011-05-SC, September 6, 2011, 656 SCRA 731, 735-736.

[5] See *Jugueta v. Estacio*, A.M. No. CA-04-17-P, November 25, 2004, 486 Phil. 206, 215-216 (2004), citing *Ballentine's Law Dictionary*, p. 978, 3rd Ed.

it refers to acts or omissions that violate the norm of public accountability and diminish - or tend to diminish - the people's faith in the Judiciary.[6]

However, it must be stressed that Salamanca's dishonesty does not consist of her failure to remit court funds because the money she received from the litigants did not acquire the status of court funds as no official receipt therefor was issued by her. The amounts misappropriated by Salamanca did not prejudice the Court's coffers since they never formed part of the Judiciary's public funds. The partial settlement paid by the defendant in *Syjuco* intended for the plaintiff, but received and misappropriated by Salamanca, was technically private money. The payment for legal fees in *Quiroga* received and pocketed by Salamanca never attained the status of being part of court funds because no official receipt was issued therefor precisely because Salamanca is not the authorized court employee to receive such payments in behalf of and for the Judiciary. It was not her duty to receive payments and issue official receipts. It also does not appear that she was authorized or designated to do so.[7] Since the subject amounts never formed part of the court funds, there was no duty on her part to remit/deposit the same with the Land Bank pursuant to Supreme Court Circular No. 50-95.

For this reason, the stringent attitude of the Court towards clerks of court who fail to remit their fiduciary collections as

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[6] *Ito v. De Vera*, 540 Phil. 23, 33-34 (2006).

[7] Under BC CSC Form No. 1 (Position Description Form), the duties and responsibilities of a Clerk III in the Judiciary are as follows:

Under general supervision:

1. receives and enters in the docket books all cases filed, including all subsequent pleadings, documents, and other pertinent communications, updates docket particularly on the status of pending cases;

2. maintains other court books such as books on disposed cases, books on appealed cases, books on warrants of arrest issued, books on Judgment;

3. checks and verifies in the docket books all applications for clearances prepares periodic report on the status of individual cases;

4. performs other duties that may be assigned.

mandated by Supreme Court Circular No. 50-95 is not applicable to Salamanca who did not hold a similar accountable position nor designated to act as such.

This does not, however, mean that the offense attributable to Salamanca is any less grave. The Court finds that the factors, taken together, are not commensurate with the extreme penalty of dismissal recommended by the OCA. The Court is persuaded to temper its power to wield penalty to an erring employee and instead adopt a compassionate and humane view at Salamanca's transgressions. A similar leniency was espoused by the Court in analogous cases.

In *Arganosa-Maniego v. Salinas*[8] which involved a utility worker in a Municipal Circuit Trial Court in Macabebe, Pampanga, the Court suspended for one (1) year, instead of dismissing from service, the respondent who was found guilty of dishonesty by taking and encashing for his personal use the check belonging to a Judge. The Court also meted one (1) year suspension to the respondent sheriff in *De Guzman, Jr. v. Mendoza*[9] who was found guilty of dishonesty and conduct prejudicial to the best interest of the service by soliciting and receiving money from litigants on several occasions in connection with a writ he was tasked to implement.

While Salamanca's complained acts involved technically private money, the deceit she pulled off disrupted the public's faith in the integrity of the judiciary and its personnel. She failed to live up to the high ethical standards required of court employees thereby prejudicing the best interest of the administration of justice. Her conduct tarnished the image and integrity of her public office[10] and violated Republic Act (R.A.) No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees, Section 4(c) of which commands that public officials and employees shall at all times respect the rights of

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[8] A.M. No. P-07-2400 (Formerly OCA IPI No. 07-2589-P), June 23, 2009, 590 SCRA 531.

[9] 493 Phil. 690 (2005).

[10] *Largo v. Court of Appeals*, 563 Phil. 293, 305 (2007).

others, and shall refrain from doing acts contrary to public safety and public interest.[11]

Edifying the above code of conduct, the Court has repeatedly pronounced that:

> [T]he conduct of every court personnel must be beyond reproach and free from suspicion that may cause to sully the image of the Judiciary. They must totally avoid any impression of impropriety, misdeed or misdemeanor not only in the performance of their official duties but also in conducting themselves outside or beyond the duties and functions of their office. Court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the Judiciary for the very image of the latter is necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.[12] (Citation omitted)

Rule 10, Section 46, subsections (A)(1) and (B)(8) of the RRACCS classify serious dishonesty and conduct prejudicial to the best interest of the service as grave offenses. Serious dishonesty entail outright dismissal from service as punishment while conduct prejudicial to the best interest of the service is penalized with suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from service for the second offense.

It can not be gainsaid that jurisprudence on administrative cases abounds with instances wherein the Court has refrained from imposing the actual penalties in view of mitigating circumstances.[13] As a matter of fact, Rule 10, Section 48 of

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[11] *Consolacion v. Gambito,* A.M. No. P-06-2186 (Formerly A.M. OCA I.P.I. No. 05-2256-P), July 3, 2012, 675 SCRA 452, 463.

[12] *Id.* at 465.

[13] See *OCA v. Aguilar,* A.M. No. RTJ-07-2087 (Formerly OCA I.PI. No. 07-2621-RTJ), June 7, 2011, 651 SCRA 13, 25-29; *Arganosa-Maniego v. Salinas,* A.M. No. P-07-2400 (Formerly OCA IPI No. 07-2589-P), June 23, 2009, 590 SCRA 531, 544-545; *De Guzman, Jr. v. Mendoza,* 493 Phil. 690 (2005).

the RRACCS also allows the disciplining authority to consider mitigating factors in determining the imposable penalty for erring civil service employees. Certain conditions such as length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations have altered the implications of a respondent's infractions.[14]

Likewise, it has been a guiding principle for the Court that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners.[15]

It is beyond question that prior to this case, Salamanca has had an unblemished record for never having been charged with any administrative offense. She has devoted a considerable period of twenty (20) years of her life to government service. She also humbled herself and acknowledged her infractions and expressed feelings of remorse for her excesses and shortcomings. Also, it is clear from the records that the amount misappropriated by her is not significantly huge.

Anent her absences, the same do not qualify as habitual for failing to meet the criteria of minimum three (3) months in a semester or three (3) consecutive months in a year as provided in Memorandum Circular No. 4, Series of 1991, of the Civil Service Commission.[16]

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[14] *Id.*

[15] *Arganosa-Maniego v. Salinas, id.* at 547.

[16] Memorandum Circular No. 4, Series of 1991, of the Civil Service Commission, states that an officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credits under the leave law for at least three (3) months in a semester or at least three (3) consecutive months during the year; *Reyes-Macabeo v. Valle,* 448 Phil. 583, 588 (2003).

WHEREFORE, foregoing considered, Liza D. Salamanca, Clerk III of Metropolitan Trial Court, Malabon City, Branch 55, is hereby found **GUILTY** of Dishonesty and Conduct Prejudicial to the Best Interest of Public Service, and is hereby **SUSPENDED** for a period of **ONE (1) YEAR without pay**, commencing upon notice of this Decision, with warning that a repetition of the same or similar act/s shall be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 185838. February 10, 2014]

RICARDO V. QUINTOS, *petitioner, vs.* **DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD and KANLURANG MINDORO FARMER'S COOPERATIVE, INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; TENANCY RELATIONSHIP; ELEMENTS.— Tenancy is a legal relationship established by the existence of particular facts as required by law. For a tenancy relationship to exist between the parties, the following essential elements must be shown: (*a*) the parties are the landowner and the tenant; (*b*) the subject matter is agricultural land; (*c*) there is consent between the parties; (*d*) the purpose is agricultural production; (*e*) there is personal cultivation by the tenant; and (*f*) there is sharing of the harvests between the parties. *All the above elements must*

concur in order to create a tenancy relationship. Thus, the absence of one does not make an occupant of a parcel of land, a cultivator or a planter thereon, a *de jure* tenant entitled to security of tenure under existing tenancy laws.

2. **ID.; ID.; ID.; ONE WHO CLAIMS TO BE A TENANT MUST PROVE HIS ALLEGATION BY SUBSTANTIAL EVIDENCE.—** The burden of proof rests on the one claiming to be a tenant to prove his affirmative allegation by substantial evidence. His failure to show in a satisfactory manner the facts upon which he bases his claim would put the opposite party under no obligation to prove his exception or defense. The rule applies to civil and administrative cases.

3. **ID.; ID.; ID.; THE RIGHT TO HIRE A TENANT IS A PERSONAL RIGHT OF A LANDOWNER.—** In this relation, it bears stressing that the right to hire a tenant is **basically a personal right of a landowner**, except as may be provided by law. Hence, **the consent of the landowner should be secured prior to the installation of tenants**. In the present case, the PARAD, the DARAB and the CA all held that a tenancy relationship exists between GCFI and the 53 KAMIFCI members who were allegedly installed as tenants by APT, the "legal possessor" of the mango orchard at that time. Records are, however, bereft of any showing that APT was authorized by the property's landowner, GCFI, to install tenants thereon. To be sure, APT only assumed the rights of the original mortgagees in this case, *i.e.*, PNB and DBP, which, however, have yet to exercise their right to foreclose the mortgaged properties due to the RTC's order enjoining the same. It is settled that a mortgagee does not become the owner of the mortgaged property until he has foreclosed the mortgage and, thereafter, purchased the property at the foreclosure sale. With the foreclosure proceedings having been enjoined, APT could not have been regarded as the "landowner" of the subject property. Thus, since the consent of the standing landowner, GCFI, had not been secured by APT in this case, it had no authority to enter into any tenancy agreement with the KAMIFCI members.

APPEARANCES OF COUNSEL

Larry M. Barcelo for petitioner.
Norberto S. Agulay, Jr. for private respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated July 31, 2006 and Resolution[3] dated December 17, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 44430 which affirmed with modification the Decision[4] dated March 20, 1997 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 1883.

The Facts

Subject of the instant case is a 604.3258 hectare (ha.) land situated in Tayamaan, Mamburao, Occidental Mindoro (subject property), covered by Transfer Certificate of Title (TCT) No. T-11639[5] in the name of Golden Country Farms, Incorporated (GCFI), which consists of: (*a*) a 249 ha. mango orchard (mango orchard); and (*b*) a 355 ha. riceland (riceland).[6]

GCFI is a domestic corporation organized for the purpose of engaging in poultry and livestock production, processing, and trading.[7] Petitioner Ricardo V. Quintos (Quintos) is the majority stockholder[8] of GCFI who managed its properties until 1975

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[1] *Rollo*, pp. 9-23.

[2] *Id.* at 25-42. Penned by Presiding Justice Ruben T. Reyes (retired member of the Court), with Associate Justices Rebecca De Guia-Salvador and Monina Arevalo-Zenarosa, concurring.

[3] *Id.* at 43-46. Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Ramon R. Garcia and Japar B. Dimaampao, concurring.

[4] CA *rollo*, pp. 27-33. Penned by Assistant Secretary Lorenzo R. Reyes, with Undersecretary Hector D. Soliman, and Assistant Secretaries Augusto P. Quijano and Sergio B. Serrano, concurring.

[5] *Id.* at 153-155.

[6] *Rollo*, p. 26.

[7] *Id.* at 11.

[8] *Id.* at 26. Quintos claims that he owns about 74% of all GCFI issued shares (*id.* at 11).

when management was taken over by Armando Romualdez (Romualdez).

Under Romualdez's management, GCFI contracted substantial loans with the Philippine National Bank (PNB) and the Development Bank of the Philippines (DBP),[9] which were secured by several real estate mortgages over GCFI properties,[10] including the subject property.[11] In 1981, Romualdez abandoned the management of the GCFI properties,[12] afterwhich DBP took over.[13] Sometime during the same year, certain people started to plant *palay* on the subject property, eventually covering the riceland.[14]

After the EDSA revolution, the possession and management of the GCFI properties were returned to GCFI. However, in July 1987, the properties were sequestered by the Presidential Commission on Good Government,[15] albeit, eventually cleared. In the meantime, PNB and DBP transferred their financial claims against GCFI to the Asset Privatization Trust (APT).[16]

For GCFI's continuous failure to pay its loans, PNB and DBP initiated extra-judicial foreclosure proceedings against the GCFI properties, which were, however, enjoined by the Regional Trial Court of Makati, Branch 134 (RTC) at Quintos's instance.[17]

In 1989, APT Officer-in-Charge Cesar Lacuesta (Lacuesta) entered into a verbal agreement with 53 members of private respondent Kanlurang Mindoro Farmers' Cooperative, Inc. (KAMIFCI), allowing the latter to tend the standing mango

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[9] *Id.* at 27.

[10] CA *rollo*, p. 29.

[11] *Id.* at 48.

[12] *Rollo*, pp. 26-27.

[13] CA *rollo*, p. 37.

[14] *Rollo*, pp. 26-27.

[15] CA *rollo*, p. 53.

[16] *Rollo*, p. 12.

[17] CA *rollo*, p. 53.

trees, induce their flowering, and gather the fruits at ₱300.00 per tree, the payment of which was to be remitted to Quintos.[18]

Subsequently, Quintos reacquired the possession and management of the GCFI properties, including the subject property, through a Memorandum of Agreement dated February 26, 1992 between him and APT, which was further approved by the RTC.[19]

Thereafter, Quintos was informed by APT of the notice from the Department of Agrarian Reform[20] (DAR) placing the riceland under compulsory acquisition pursuant to the Comprehensive Agrarian Reform Program (CARP) of the government.[21] This prompted Quintos to file a petition for exemption before the Office of the DAR Secretary (exemption case). In the main, Quintos cited the Court's ruling in *Luz Farms v. Secretary of the Department of Agrarian Reform*[22] (*Luz Farms*) wherein it declared as unconstitutional the inclusion of lands devoted to commercial raising of livestock, poultry, and swine under the CARP. To this end, Quintos claimed that GCFI was organized for the primary purpose of buying, selling, importing, exporting, improving, preparing, processing, producing, dealing, and trading-in cattle, swine, poultry, stock, meat, dairy products, *etc.*, warranting the exemption of its properties, including the subject property, from CARP coverage.[23]

In an Order[24] dated October 5, 1993 (October 5, 1993 DAR Order), then DAR Secretary Ernesto D. Garilao (DAR Secretary) ruled that the exemption enumerated in *Luz Farms* applies only to poultry, livestock, or swine farms existing as of June 15,

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[18] *Rollo*, p. 27.

[19] CA *rollo*, pp. 29 and 53.

[20] *Id.* at 53.

[21] *Id.* at 41 and 53.

[22] *Id.* at 48; G.R. No. 86889, December 4, 1990, 192 SCRA 51.

[23] CA *rollo*, p. 49.

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

1988, the effectivity date of Republic Act No. (RA) 6657,[25] otherwise known as the "Comprehensive Agrarian Reform Law of 1988." Thus, considering that GCFI had ceased operations as such before the said date, or in May 1988, and that the subject property continued to be devoted to agricultural uses, including rice production and operation of groves of mango trees, the DAR Secretary denied Quintos's petition for exemption, and ordered the Regional Director to place under CARP coverage[26] the area actually cultivated to the extent of 558.9657 has.[27]

The Proceedings Before the PARAD

Meanwhile, on October 12, 1992, KAMIFCI filed an action for the peaceful possession and enjoyment of the subject property (tenancy case) against Quintos before the Office of the Provincial Adjudicator (PARAD) of San Jose, Occidental Mindoro, asserting its rights under an agricultural leasehold tenancy agreement it purportedly entered into with Lacuesta. In his answer, Quintos denied the personality of KAMIFCI as a registered cooperative as well as the existence of any tenancy agreement covering the subject property.[28]

On November 3, 1993, the PARAD rendered a Decision[29] (November 3, 1993 PARAD Decision), holding that there was a verbal lease tenancy agreement entered into by Lacuesta with the 53 KAMIFCI members with respect to the mango orchard, and such was binding upon APT and GCFI[30] notwithstanding the Certification[31] dated August 25, 1993 issued

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[25] "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES."

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

[27] *Id.* at 53.

[28] *Id.* at 28.

[29] *Id.* at 37-47. Penned by Provincial Adjudicator Claro M. Almobela.

[30] *Id.* at 40.

[31] *Id.* at 66.

by APT denying Lacuesta's authority to enter into any tenurial relation and to issue GCFI official receipts. As such, the PARAD directed the reinstatement of the 53 KAMIFCI members previously tending the mango trees during the 1990 to 1991 and 1991 to 1992 seasons, and ordered them to pay the corresponding consideration of ₱300.00 per mango tree per season. The PARAD likewise held that the riceland had already been placed under CARP coverage and acquired for disposition by the DAR.[32] Accordingly, it enjoined Quintos or any person acting in his behalf from disturbing the peaceful occupation of the farmer occupants in the subject property. Aggrieved, Quintos appealed to the DARAB.

Meanwhile, the Office of the President (OP) rendered a Decision[33] dated February 21, 1995 (February 21, 1995 OP Decision) in the exemption case, ruling that the cessation of poultry and livestock activities on the GCFI properties, including the subject property, a month prior to the effectivity of RA 6657, does not *a priori* convert the properties to agricultural lands. In this relation, the OP concluded that the act of the DAR in declaring the said properties as covered by the CARP without affording GCFI the opportunity to contest the supposed conversion was arbitrary and confiscatory.[34] Hence, it set aside the October 5, 1993 DAR Order, and granted the petition for exemption, except with respect to the mango orchard, the coverage and compulsory acquisition of which was deferred pursuant to Section 11[35] of RA 6657.

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[32] *Id.* at 41.

[33] *Id.* at 52-60. Penned by then Executive Secretary Teofisto T. Guingona, Jr., by authority of the President.

[34] *Id.* at 59.

[35] SEC. 11. *Commercial Farming*. — Commercial farms which are private agricultural lands devoted to salt beds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations, shall be subject to immediate compulsory acquisition and distribution after ten (10) years from the effectivity of this Act. In the case of new farms, the ten-year period shall begin from the first year of commercial production and operation,

The DAR filed a motion for reconsideration which was, however, denied with finality in a Resolution[36] dated December 20, 1995 for being filed out of time. Because of this, the February 21, 1995 OP Decision became final and executory.

The DARAB Ruling

On March 20, 1997, the DARAB rendered a Decision[37] in the tenancy case, respecting the findings and conclusions made in the February 21, 1995 OP Decision. It also (*a*) declared that the farmers in the "palayan area" covering 355 has. (*i.e.*, the Riceland) may qualify as farmer-beneficiaries in the mango orchard as may be determined by the Municipal Agrarian Reform Officer; (*b*) held that Certificates of Land Ownership Award (CLOAs) should be generated immediately and distributed to qualified farmer- beneficiaries; and (*c*) affirmed the directive for Quintos not to disturb the peaceful possession and cultivation of the farmers in the mango orchard.

Dissatisfied, Quintos appealed to the CA, claiming that GCFI never consented to any tenancy relationship with the KAMIFCI members. It also argued that Lacuesta could not have established a valid tenancy relation with the KAMIFCI members covering the mango orchard on account of APT's: (*a*) admission and acknowledgment that GCFI remains the owner of the subject property, which means that, APT cannot exercise any of the attributes of ownership until foreclosure thereof is effected; and (*b*) denial of Lacuesta's authority to enter into any tenurial agreement with any individual or farmers' cooperative for the use/lease of the subject property.[38]

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as determined by the DAR. During the ten-year period, the Government shall initiate steps necessary to acquire these lands, upon payment of just compensation for the land and the improvements thereon, preferably in favor of organized cooperatives or associations, which shall thereafter manage the said lands for the workers-beneficiaries.

[36] CA *rollo*, pp. 61-64. Penned by Senior Deputy Executive Secretary Leonardo A. Quisumbing, by authority of the President.

[37] *Id.* at 27-33.

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

Quintos further contended that the immediate generation of CLOAs is improper without payment of just compensation and affording GCFI the opportunity to exercise its right of retention.[39]

The CA Ruling

On July 31, 2006, the CA rendered a Decision,[40] holding that the tenancy agreement entered by APT with the 53 KAMIFCI members on the mango orchard was binding upon GCFI since all its business concerns and transactions were coursed through APT at that time. It, however, declared as premature the generation of CLOAs in favor of the farmer-beneficiaries pending exercise of the landowner's right of retention and absent payment of just compensation. Considering that the February 21, 1995 OP Decision had already attained finality, the CA no longer tackled the issues posed with respect to the riceland.

Unperturbed, Quintos filed a motion for partial reconsideration[41] which was denied in a Resolution[42] dated December 17, 2008. In addition, the CA directed the DAR to conduct the appropriate survey to ascertain the actual surface area of the mango orchard. Hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly sustained the validity of the tenancy agreement purported in this case.

The Court's Ruling

The petition is meritorious.

Tenancy is a legal relationship established by the existence of particular facts as required by law.[43] For a tenancy relationship

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

[40] *Rollo*, pp. 25-42.

[41] CA *rollo*, pp. 240-254.

[42] *Rollo*, pp. 43-46.

[43] *Salmorin v. Dr. Zaldivar*, 581 Phil. 531, 538 (2008).

to exist between the parties, the following essential elements must be shown: (*a*) the parties are the landowner and the tenant; (*b*) the subject matter is agricultural land; (*c*) there is consent between the parties; (*d*) the purpose is agricultural production; (*e*) there is personal cultivation by the tenant; and (*f*) there is sharing of the harvests between the parties.[44] *All the above elements must concur in order to create a tenancy relationship*. Thus, the absence of one does not make an occupant of a parcel of land, a cultivator or a planter thereon, a *de jure* tenant entitled to security of tenure under existing tenancy laws.[45]

The burden of proof rests on the one claiming to be a tenant to prove his affirmative allegation by substantial evidence. His failure to show in a satisfactory manner the facts upon which he bases his claim would put the opposite party under no obligation to prove his exception or defense. The rule applies to civil and administrative cases.[46]

In this relation, it bears stressing that the right to hire a tenant is **basically a personal right of a landowner,** except as may be provided by law**.** [47] **Hence,** the **consent of the landowner should be secured prior to the installation of tenants.** [48]

In the present case, the PARAD, the DARAB and the CA all held that a tenancy relationship exists between GCFI and the 53 KAMIFCI members who were allegedly installed as tenants by APT, the "legal possessor" of the mango orchard at that time. Records are, however, bereft of any showing that

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[44] *Estate of Pastor M. Samson v. Susano*, G.R. Nos. 179024 and 179086, May 30, 2011, 649 SCRA 345, 365.

[45] *Reyes v. Spouses Joson*, 551 Phil. 345, 352 (2007).

[46] See *Soliman v. Pampanga Sugar Development Company (PASUDECO), Inc.*, G.R. No. 169589, June 16, 2009, 589 SCRA 236, 249-250.

[47] *Valencia v. CA*, 449 Phil. 711, 730 (2003); *VHJ Construction and Development Corp. v. CA*, 480 Phil. 28, 38 (2004); *Sumawang v. Engr. De Guzman*, 481 Phil. 239, 247 (2004); *Pag-asa Fishpond Corp. v. Jimenez*, 578 Phil. 106, 130 (2008).

[48] See *Pag-asa Fishpond Corporation v. Jimenez*, *id.* at 134.

APT was authorized by the property's landowner, GCFI, to install tenants thereon. To be sure, APT only assumed the rights of the original mortgagees in this case, *i.e.*, PNB and DBP, which, however, have yet to exercise their right to foreclose the mortgaged properties due to the RTC's order enjoining the same. It is settled that a mortgagee does not become the owner of the mortgaged property until he has foreclosed the mortgage and, thereafter, purchased the property at the foreclosure sale. [49] With the foreclosure proceedings having been enjoined, APT could not have been regarded as the "landowner" of the subject property. Thus, since the consent of the standing landowner, GCFI, had not been secured by APT in this case, it had no authority to enter into any tenancy agreement with the KAMIFCI members.

It is well to note that a reliance on Section 6 [50] of RA 3844, [51] as amended, does not dilute the propriety of this conclusion. In *Valencia v. CA* (*Valencia*), [52] the Court illumined that the said section – contrary to the milieu of the present case – already "assumes that there is already an existing agricultural leasehold relation," consistent with the "personal character" of the tenancy relationship, *viz*.: [53]

> When Sec. 6 provides that the agricultural leasehold relations shall be limited to the person who furnishes the landholding, either as owner, civil law lessee, usufructuary, or legal possessor, and the

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[49] *Ramirez v. CA*, 456 Phil. 345, 353.

[50] Section 6. Parties to Agricultural Leasehold Relation. — The agricultural leasehold relation shall be limited to the person who furnishes the landholding, either as owner, civil law lessee, usufructuary, or legal possessor, and the person who personally cultivates the same.

[51] Entitled "AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES."

[52] *Supra* note 47.

[53] *Id.* at 730-732.

person who personally cultivates the same, ***it assumes that there is already an existing agricultural leasehold relation, i.e., a tenant or agricultural lessee already works the land.*** The epigraph of Sec. 6 merely states who are "*Parties to Agricultural Leasehold Relations*," which assumes that there is already a leasehold tenant on the land; x x x.

To better understand Sec. 6, let us refer to its precursor, Sec. 8 of R.A. 1199, as amended. Again, Sec. 8 of R.A. No. 1199 assumes the existence of a tenancy relation. As its epigraph suggests, it is a "*Limitation of Relation*," and the purpose is merely to limit the tenancy "to the person who furnishes the land, either as owner, lessee, usufructuary, or legal possessor, and to the person who actually works the land himself with the aid of labor available from within his immediate farm household." Once the tenancy relation is established, the parties to that relation are limited to the persons therein stated. Obviously, inherent in the right of landholders to install a tenant is their *authority* to do so; otherwise, *without such authority,* x x x *landholders cannot install a tenant on the landholding*. ***Neither Sec. 6 of R.A. No. 3844 nor Sec. 8 of R.A. No. 1199 automatically authorizes the persons named therein to employ a tenant on the landholding.***

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[N]oted authority on land reform, Dean Jeremias U. Montemayor, explains the rationale for Sec. 8 of R.A. No. 1199, the precursor of Sec. 6 of R.A. No. 3844:

Since the law establishes a special relationship in tenancy with important consequences, it properly pinpoints the persons to whom said relationship shall apply. The spirit of the law is to prevent both landholder absenteeism and tenant absenteeism. Thus, it would seem that the discretionary powers and important duties of the landholder, like the choice of crop or seed, cannot be left to the will or capacity of an agent or overseer, just as the cultivation of the land cannot be entrusted by the tenant to some other people. ***Tenancy relationship has been held to be of a personal character***. (Emphases and underscoring supplied; citations omitted)

WHEREFORE, the petition is **GRANTED.** The Decision dated July 31, 2006 and Resolution dated December 17, 2008 of the Court of Appeals in CA-G.R. SP No. 44430 are

REVERSED and **SET ASIDE** since no valid tenancy agreement exists over the mango orchard subject of this case.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr. Brion,* and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 189538. February 10, 2014]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MERLINDA L. OLAYBAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; A DIRECT RECOURSE TO THE SUPREME COURT FROM THE DECISIONS AND FINAL ORDERS OF THE REGIONAL TRIAL COURT IS ALLOWED WHERE ONLY QUESTIONS OF LAW ARE INVOLVED.— [A] direct recourse to this Court from the decisions and final orders of the RTC may be taken where only questions of law are raised or involved. There is a question of law when the doubt arises as to what the law is on a certain state of facts, which does not call for the examination of the probative value of the evidence of the parties. Here, the issue raised by petitioner is whether or not the cancellation of entries in the marriage contract which, in effect, nullifies the marriage may be undertaken in a Rule 108 proceeding. Verily, petitioner raised a pure question of law.

2. ID.; ID.; SPECIAL PROCEEDINGS; CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; THE PROCEEDINGS MAY EITHER BE SUMMARY OR

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* Designated Additional Member per Raffle dated February 5, 2014.

ADVERSARY.— Rule 108 of the Rules of Court provides the procedure for cancellation or correction of entries in the civil registry. The proceedings may either be summary or adversary. If the correction is clerical, then the procedure to be adopted is summary. If the rectification affects the civil status, citizenship or nationality of a party, it is deemed substantial, and the procedure to be adopted is adversary. Since the promulgation of *Republic v. Valencia* in 1986, the Court has repeatedly ruled that "even substantial errors in a civil registry may be corrected through a petition filed under Rule 108, with the true facts established and the parties aggrieved by the error availing themselves of the appropriate adversarial proceeding." An appropriate adversary suit or proceeding is one where the trial court has conducted proceedings where all relevant facts have been fully and properly developed, where opposing counsel have been given opportunity to demolish the opposite party's case, and where the evidence has been thoroughly weighed and considered.

3. ID.; ID.; ID.; ID.; THE PROCEDURE IS NOT A SUMMARY PROCEEDING *PER SE*.— It is true that in special proceedings, formal pleadings and a hearing may be dispensed with, and the remedy [is] granted upon mere application or motion. However, a special proceeding is not always summary. The procedure laid down in Rule 108 is not a summary proceeding *per se*. It requires publication of the petition; it mandates the inclusion as parties of all persons who may claim interest which would be affected by the cancellation or correction; it also requires the civil registrar and any person in interest to file their opposition, if any; and it states that although the court may make orders expediting the proceedings, it is after hearing that the court shall either dismiss the petition or issue an order granting the same. Thus, as long as the procedural requirements in Rule 108 are followed, it is the appropriate adversary proceeding to effect substantial corrections and changes in entries of the civil register.

4. ID.; ID.; ID.; ID.; PROPER IN CASE AT BAR FOR WHAT IS SOUGHT IS THE CORRECTION OF THE RECORD OF THE MARRIAGE TO REFLECT THE TRUTH AS SET FORTH BY THE EVIDENCE AND NOT THE NULLIFICATION OF MARRIAGE AS THERE WAS NO MARRIAGE TO SPEAK OF.— Aside from the certificate of marriage, no such evidence

was presented to show the existence of marriage. Rather, respondent showed by overwhelming evidence that no marriage was entered into and that she was not even aware of such existence. The testimonial and documentary evidence clearly established that the only "evidence" of marriage which is the marriage certificate was a forgery. While we maintain that Rule 108 cannot be availed of to determine the validity of marriage, we cannot nullify the proceedings before the trial court where all the parties had been given the opportunity to contest the allegations of respondent; the procedures were followed, and all the evidence of the parties had already been admitted and examined. Respondent indeed sought, not the nullification of marriage as there was no marriage to speak of, but the correction of the record of such marriage to reflect the truth as set forth by the evidence. Otherwise stated, in allowing the correction of the subject certificate of marriage by cancelling the wife portion thereof, the trial court did not, in any way, declare the marriage void as there was no marriage to speak of.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Salvador O. Solima for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Regional Trial Court[1] (*RTC*) Decision[2] dated May 5, 2009 and Order[3] dated August 25, 2009 in SP. Proc. No. 16519-CEB. The assailed Decision granted respondent Merlinda L. Olaybar's petition for cancellation of entries in the latter's marriage contract; while the assailed Order denied the motion for reconsideration filed by petitioner

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[1] Branch 6, Cebu City.

[2] Penned by Presiding Judge Ester M. Veloso; *rollo*, pp. 32-34.

[3] *Rollo*, pp. 36-41.

Republic of the Philippines through the Office of the Solicitor General (*OSG*).

The facts of the case are as follows:

Respondent requested from the National Statistics Office (*NSO*) a Certificate of No Marriage (*CENOMAR*) as one of the requirements for her marriage with her boyfriend of five years. Upon receipt thereof, she discovered that she was already married to a certain Ye Son Sune, a Korean National, on June 24, 2002, at the Office of the Municipal Trial Court in Cities (*MTCC*), Palace of Justice. She denied having contracted said marriage and claimed that she did not know the alleged husband; she did not appear before the solemnizing officer; and, that the signature appearing in the marriage certificate is not hers.[4] She, thus, filed a *Petition for Cancellation of Entries in the Marriage Contract*, especially the entries in the wife portion thereof.[5] Respondent impleaded the Local Civil Registrar of Cebu City, as well as her alleged husband, as parties to the case.

During trial, respondent testified on her behalf and explained that she could not have appeared before Judge Mamerto Califlores, the supposed solemnizing officer, at the time the marriage was allegedly celebrated, because she was then in Makati working as a medical distributor in Hansao Pharma. She completely denied having known the supposed husband, but she revealed that she recognized the named witnesses to the marriage as she had met them while she was working as a receptionist in Tadels Pension House. She believed that her name was used by a certain Johnny Singh, who owned a travel agency, whom she gave her personal circumstances in order for her to obtain a passport.[6] Respondent also presented as witness a certain Eufrocina Natinga, an employee of MTCC, Branch 1, who confirmed that the marriage of Ye Son Sune was indeed celebrated in their office, but claimed that the alleged wife who appeared was definitely not respondent.[7]

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[4] *Id.* at 32.

[5] *Id.*

[6] *Id.* at 33.

[7] *Id.*

Lastly, a document examiner testified that the signature appearing in the marriage contract was forged.[8]

On May 5, 2009, the RTC rendered the assailed Decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered, the petition is granted in favor of the petitioner, Merlinda L. Olaybar. The Local Civil Registrar of Cebu City is directed to cancel all the entries in the WIFE portion of the alleged marriage contract of the petitioner and respondent Ye Son Sune.
>
> SO ORDERED.[9]

Finding that the signature appearing in the subject marriage contract was not that of respondent, the court found basis in granting the latter's prayer to straighten her record and rectify the terrible mistake.[10]

Petitioner, however, moved for the reconsideration of the assailed Decision on the grounds that: (1) there was no clerical spelling, typographical and other innocuous errors in the marriage contract for it to fall within the provisions of Rule 108 of the Rules of Court; and (2) granting the cancellation of all the entries in the wife portion of the alleged marriage contract is, in effect, declaring the marriage void *ab initio*.[11]

In an Order dated August 25, 2009, the RTC denied petitioner's motion for reconsideration couched in this wise:

> **WHEREFORE**, the court hereby denies the Motion for Reconsideration filed by the Republic of the Philippines. Furnish copies of this order to the Office of the Solicitor General, the petitioner's counsel, and all concerned government agencies.
>
> **SO ORDERED**.[12]

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[8] *Id.* at 33-34.

[9] *Id.* at 34.

[10] *Id.*

[11] *Id.* at 36.

[12] *Id.* at 41. (Emphasis in the original)

Contrary to petitioner's stand, the RTC held that it had jurisdiction to take cognizance of cases for correction of entries even on substantial errors under Rule 108 of the Rules of Court being the appropriate adversary proceeding required. Considering that respondent's identity was used by an unknown person to contract marriage with a Korean national, it would not be feasible for respondent to institute an action for declaration of nullity of marriage since it is not one of the void marriages under Articles 35 and 36 of the Family Code.[13]

Petitioner now comes before the Court in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the assailed RTC Decision and Order based on the following grounds:

I.

RULE 108 OF THE REVISED RULES OF COURT APPLIES ONLY WHEN THERE ARE ERRORS IN THE ENTRIES SOUGHT TO BE CANCELLED OR CORRECTED.

II.

GRANTING THE CANCELLATION OF "ALL THE ENTRIES IN THE WIFE PORTION OF THE ALLEGED MARRIAGE CONTRACT," IS IN EFFECT DECLARING THE MARRIAGE VOID *AB INITIO*.[14]

Petitioner claims that there are no errors in the entries sought to be cancelled or corrected, because the entries made in the certificate of marriage are the ones provided by the person who appeared and represented herself as Merlinda L. Olaybar and are, in fact, the latter's personal circumstances.[15] In directing the cancellation of the entries in the wife portion of the certificate of marriage, the RTC, in effect, declared the marriage null and void *ab initio*.[16] Thus, the petition instituted by respondent is

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

[14] *Id.* at 18.

[15] *Id.* at 21.

[16] *Id.* at 23.

actually a petition for declaration of nullity of marriage in the guise of a Rule 108 proceeding.[17]

We deny the petition.

At the outset, it is necessary to stress that a direct recourse to this Court from the decisions and final orders of the RTC may be taken where only questions of law are raised or involved. There is a question of law when the doubt arises as to what the law is on a certain state of facts, which does not call for the examination of the probative value of the evidence of the parties.[18] Here, the issue raised by petitioner is whether or not the cancellation of entries in the marriage contract which, in effect, nullifies the marriage may be undertaken in a Rule 108 proceeding. Verily, petitioner raised a pure question of law.

Rule 108 of the Rules of Court sets forth the rules on cancellation or correction of entries in the civil registry, to wit:

SEC. 1. *Who may file petition.* – Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Regional Trial Court of the province where the corresponding civil registry is located.

SEC. 2. *Entries subject to cancellation or correction.* – Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

SEC. 3. *Parties.* – When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

[17] *Id.* at 24.

[18] *Republic v. Sagun*, G.R. No. 187567, February 15, 2012, 666 SCRA 321, 329.

SEC. 4. *Notice and Publication.* – Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SEC. 5. *Opposition.* – The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

SEC. 6. *Expediting proceedings.* – The court in which the proceedings is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

SEC. 7. *Order*. – After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

Rule 108 of the Rules of Court provides the procedure for cancellation or correction of entries in the civil registry. The proceedings may either be summary or adversary. If the correction is clerical, then the procedure to be adopted is summary. If the rectification affects the civil status, citizenship or nationality of a party, it is deemed substantial, and the procedure to be adopted is adversary. Since the promulgation of *Republic v. Valencia*[19] in 1986, the Court has repeatedly ruled that "even substantial errors in a civil registry may be corrected through a petition filed under Rule 108, with the true facts established and the parties aggrieved by the error availing themselves of the appropriate adversarial proceeding."[20] An appropriate adversary suit or proceeding is one where the trial court has conducted proceedings where all relevant facts have been fully and properly developed, where opposing counsel have been

[19] 225 Phil. 408 (1986).

[20] *Barco v. Court of Appeals*, 465 Phil. 39, 58 (2004).

given opportunity to demolish the opposite party's case, and where the evidence has been thoroughly weighed and considered. [21]

It is true that in special proceedings, formal pleadings and a hearing may be dispensed with, and the remedy [is] granted upon mere application or motion. However, a special proceeding is not always summary. The procedure laid down in Rule 108 is not a summary proceeding *per se*. It requires publication of the petition; it mandates the inclusion as parties of all persons who may claim interest which would be affected by the cancellation or correction; it also requires the civil registrar and any person in interest to file their opposition, if any; and it states that although the court may make orders expediting the proceedings, it is after hearing that the court shall either dismiss the petition or issue an order granting the same. Thus, as long as the procedural requirements in Rule 108 are followed, it is the appropriate adversary proceeding to effect substantial corrections and changes in entries of the civil register.[22]

In this case, the entries made in the wife portion of the certificate of marriage are admittedly the personal circumstances of respondent. The latter, however, claims that her signature was forged and she was not the one who contracted marriage with the purported husband. In other words, she claims that no such marriage was entered into or if there was, she was not the one who entered into such contract. It must be recalled that when respondent tried to obtain a CENOMAR from the NSO, it appeared that she was married to a certain Ye Son Sune. She then sought the cancellation of entries in the wife portion of the marriage certificate.

In filing the petition for correction of entry under Rule 108, respondent made the Local Civil Registrar of Cebu City, as well as her alleged husband Ye Son Sune, as parties-respondents. It is likewise undisputed that the procedural requirements set forth in Rule 108 were complied with. The Office of the Solicitor

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[21] *Republic of the Philippines v. Lim*, 464 Phil. 151, 157 (2004); *Eleosida v. Local Civil Registrar of Quezon City*, 431 Phil. 612, 619 (2002).

[22] *Lee v. Court of Appeals*, 419 Phil. 392, 410 (2001).

General was likewise notified of the petition which in turn authorized the Office of the City Prosecutor to participate in the proceedings. More importantly, trial was conducted where respondent herself, the stenographer of the court where the alleged marriage was conducted, as well as a document examiner, testified. Several documents were also considered as evidence. With the testimonies and other evidence presented, the trial court found that the signature appearing in the subject marriage certificate was different from respondent's signature appearing in some of her government issued identification cards.[23] The court thus made a categorical conclusion that respondent's signature in the marriage certificate was not hers and, therefore, was forged. Clearly, it was established that, as she claimed in her petition, no such marriage was celebrated.

Indeed the Court made a pronouncement in the recent case of *Minoru Fujiki v. Maria Paz Galela Marinay, Shinichi Maekara, Local Civil Registrar of Quezon City, and the Administrator and Civil Registrar General of the National Statistics Office*[24] that:

> To be sure, a petition for correction or cancellation of an entry in the civil registry cannot substitute for an action to invalidate a marriage. A direct action is necessary to prevent circumvention of the substantive and procedural safeguards of marriage under the Family Code, A.M. No. 02-11-10-SC and other related laws. Among these safeguards are the requirement of proving the limited grounds for the dissolution of marriage, support *pendente lite* of the spouses and children, the liquidation, partition and distribution of the properties of the spouses and the investigation of the public prosecutor to determine collusion. A direct action for declaration of nullity or annulment of marriage is also necessary to prevent circumvention of the jurisdiction of the Family Courts under the Family Courts Act of 1997 (Republic Act No. 8369), as a petition for cancellation or correction of entries in the civil registry may be filed in the Regional Trial Court where the corresponding civil registry is located. In other words, a Filipino citizen cannot dissolve his marriage

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[23] *Rollo*, pp. 33-34.

[24] G.R. No. 196049, June 26, 2013.

by the mere expedient of changing his entry of marriage in the civil registry. [25]

Aside from the certificate of marriage, no such evidence was presented to show the existence of marriage. Rather, respondent showed by overwhelming evidence that no marriage was entered into and that she was not even aware of such existence. The testimonial and documentary evidence clearly established that the only "evidence" of marriage which is the marriage certificate was a forgery. While we maintain that Rule 108 cannot be availed of to determine the validity of marriage, we cannot nullify the proceedings before the trial court where all the parties had been given the opportunity to contest the allegations of respondent; the procedures were followed, and all the evidence of the parties had already been admitted and examined. Respondent indeed sought, not the nullification of marriage as there was no marriage to speak of, but the correction of the record of such marriage to reflect the truth as set forth by the evidence. Otherwise stated, in allowing the correction of the subject certificate of marriage by cancelling the wife portion thereof, the trial court did not, in any way, declare the marriage void as there was no marriage to speak of.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The Regional Trial Court Decision dated May 5, 2009 and Order dated August 25, 2009 in SP. Proc. No. 16519-CEB, are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

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[25] *Minoru Fujiki v. Maria Paz Galela Marinay, Shinichi Maekara, Local Civil Registrar of Quezon City, and the Administrator and Civil Registrar General of the National Statistics Office*, G.R. No. 196049, June 26, 2013.

SECOND DIVISION

[G.R. No. 190621. February 10, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GLENN SALVADOR *y* BALVERDE, and DORY ANN PARCON *y* DEL ROSARIO,** *accused,* **GLENN SALVADOR *y* BALVERDE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In a successful prosecution for illegal sale of dangerous drugs, like *shabu*, the following elements must be established: "(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. x x x What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*" or the illicit drug in evidence. "[T]he commission of the offense of illegal sale of dangerous drugs x x x merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place."

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE CREDIBILITY OF THE POLICE OFFICERS WHO CONDUCTED THE BUY-BUST OPERATION IS MATERIAL IN PROSECUTION FOR ILLEGAL DRUGS.— Prosecutions for illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Their narration of the incident, "buttressed by the presumption that they have regularly performed their duties in the absence of convincing proof to the contrary, must be given weight." Here, the CA affirmed the RTC's ruling that the testimonies and facts stipulated upon were consistent with each other as well as with the physical evidence. Thus, there is no justification to disturb the findings of the RTC, as sustained by the CA, on the matter.

3. ID.; ID.; DENIAL; AN UNSUBSTANTIATED DEFENSE OF DENIAL CANNOT BE GIVEN GREATER EVIDENTIARY VALUE OVER CONVINCING TESTIMONY ON AFFIRMATIVE MATTERS.— Denial cannot prevail against the positive testimony of a prosecution witness. "A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters."

4. ID.; ID.; FRAME-UP; TO PROSPER AS A DEFENSE, IT MUST BE SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE SHOWING THAT THE BUY-BUST TEAM WAS INSPIRED BY IMPROPER MOTIVE OR WAS NOT PROPERLY PERFORMING ITS DUTY.— Appellant cannot x x x avail of the defense of frame-up which "is viewed with disfavor since, like alibi, it can easily be concocted and is a common ploy in most prosecutions for violations of the Dangerous Drugs Law." To substantiate this defense, the evidence must be clear and convincing and should show that the buy-bust team was inspired by improper motive or was not properly performing its duty. Here, there is no evidence that there was ill motive on the part of the buy-bust team. In fact, appellant himself admitted that he did not know the police officers prior to his arrest. There could therefore be no bad blood between him and the said police officers. Moreover, there was no proof that the arresting officers improperly performed their duty in arresting appellant and Parcon.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); FAILURE TO COMPLY WITH THE PROCEDURE SET THEREIN AS REGARDS THE CUSTODY AND DISPOSITION OF CONFISCATED ITEMS WILL NOT RENDER AN ARREST ILLEGAL OR THE SEIZED ITEMS INADMISSIBLE IN EVIDENCE PROVIDED THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS HAVE BEEN PRESERVED.— [F]ailure to strictly comply with x x x [Section 21(1), Art. II of RA 9165] will not render an arrest illegal or the seized items inadmissible in evidence. Substantial compliance is allowed as provided for in Section 21(a) of the Implementing Rules and

Regulations of RA 9165. x x x The failure of the prosecution to show that the police officers conducted the required physical inventory and photographed the objects confiscated does not *ipso facto* result in the unlawful arrest of the accused or render inadmissible in evidence the items seized. This is due to the *proviso* added in the implementing rules stating that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have not been preserved. "What is crucial is that the integrity and evidentiary value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused."

6. ID.; ID.; CUSTODY AND DISPOSITION OF CONFISCATED ITEMS; CHAIN OF CUSTODY; DEFINED.— "The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established." "'Chain of Custody' means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court. Such record of movements and custody of seized item shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition."

7. ID.; ID.; ID.; ID.; LINKS THAT MUST BE ESTABLISHED THEREIN.— There are links that must be established in the chain of custody in a buy-bust situation, namely: "*first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."

8. ID.; ID.; ID.; ID.; THE MARKING OF THE DANGEROUS DRUG MAY BE DONE IN THE PRESENCE OF THE VIOLATOR IN

THE NEAREST POLICE STATION OR THE NEAREST OFFICE OF THE APPREHENDING TEAM IN A BUY-BUST SITUATION.— It is clear from x x x Sec. 21(a) of the Implementing Rules and Regulations of RA 9165 that in a buy-bust situation, the marking of the dangerous drug may be done in the presence of the violator in the nearest police station or the nearest office of the apprehending team. Appellant should not confuse buy-bust situation from search and seizure conducted by virtue of a court-issued warrant. It is in the latter case that physical inventory (which includes the marking) is made at the place where the search warrant is served. Nonetheless, "non-compliance with [the] 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."

9. ID.; ID.; ILLEGAL SALE OF *SHABU*; PENALTY.— [T]here is no reason to disturb the finding of the RTC, as affirmed by the CA, that appellant is guilty beyond reasonable doubt of illegal sale of *shabu*, as defined and penalized under Section 5, Article II of RA 9165. Under this law, the penalty for the unauthorized sale of *shabu*, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. However, with the enactment of RA 9346, only life imprisonment and fine shall be imposed. Thus, the penalty imposed by the RTC and affirmed by the CA is proper.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

In a buy-bust operation, the failure to conduct a physical inventory and to photograph the items seized from the accused will not render his arrest illegal or the items confiscated from

him inadmissible in evidence as long as the integrity and evidentiary value of the said items have been preserved.[1]

Factual Antecedents

For review is the Decision[2] dated September 24, 2009 of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 03230 that affirmed *in toto* the January 15, 2008 Decision[3] of the Regional Trial Court (RTC), Branch 82, Quezon City, in Criminal Case Nos. Q-03-120799-800. The said RTC Decision found Glenn Salvador *y* Balverde (appellant) guilty beyond reasonable doubt of violation of Section 5 (illegal sale), and accused Dory Ann Parcon *y* Del Rosario (Parcon) guilty beyond reasonable doubt of violation of Section 11 (illegal possession), both of Article II, Republic Act No. 9165 (RA9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Information[4] for violation of Section 5, Article II of RA 9165 filed against appellant in Criminal Case No. Q-03-120799 has the following accusatory portion:

> That on or about the 3rd day of September, 2003 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, one (1) plastic sachet of white crystalline substance containing zero point zero four (0.04) gram of Methylamphetamine Hydrochloride a dangerous drug.
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> CONTRARY TO LAW.[5]

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[1] *People v. De Jesus*, G.R. No. 198794, February 6, 2013, 690 SCRA 180,199.

[2] CA *rollo*, pp. 125-137; penned by Associate Justice Bienvenido L. Reyes (now a member of this court) and concurred in by Associate Justices Japar B. Dimaampao and Antonio L. Villamor.

[3] Records, pp. 235-241; penned by Judge Severino B. De Castro, Jr.

[4] *Id.* at 2-3

[5] *Id.* at 2.

While the pertinent portion of the Information[6] for violation of Section 11 of Article II, RA 9165 filed against Parcon in Criminal Case No. Q-03-120800 is as follows:

> That on or about the 3rd day of September, 2003 in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did then and there willfully, unlawfully and knowingly have in his/her possession and control one (1) plastic sachet of white crystalline substance containing zero point zero four (0.04) gram of Methylamphetamine Hydrochloride a dangerous drug.
>
> CONTRARY TO LAW.[7]

Upon motion of the prosecution,[8] the cases were consolidated. On November 4, 2003, appellant and Parcon were arraigned. They entered separate pleas of 'not guilty'.[9]

During the pre-trial conference, appellant admitted the following facts which the prosecution offered for stipulation:

> x x x [T]hat [Police Inspector Leonard T. Arban (P/Insp. Arban)] is a Forensic Chemist of the PNP; that he received a letter-request for Laboratory Examination for certain specimen which was marked as Exhibit "A"; that together with the said request is a brown envelope marked as Exhibit "B"; that said brown envelope contained a plastic sachet marked as Exhibit "B-1" and thereafter he conducted the examination of the said specimen and submitted a report marked as Exhibit "C"; the findings thereon that the specimen was positive for Methylamphetamine Hydrochloride was marked as Exhibit "C-1" and the signature of the said police officer was marked as Exhibit "C-2". Thereafter, said police officer turned over the said evidence to the Evidence Custodian and retrieved the same for purposes of the hearing today.[10]

Trial ensued. Parcon failed to attend the scheduled hearings, hence, she was tried *in absentia*.[11]

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[6] *Id.* at 6-7.

[7] *Id.* at 6.

[8] See Motion for Consolidation, *id.* at 1.

[9] *Id.* at 29.

[10] *Id.* at 36.

[11] *Id.* at 91.

Version of the Prosecution

The prosecution presented PO2 Sofjan Soriano (PO2 Soriano) to testify on the entrapment operation that resulted in the arrest of appellant and Parcon. From his testimony,[12] the following facts emerged:

While PO2 Soriano was on duty in Police Station 2, Baler Street, Quezon City on September 2, 2003, a confidential informant (CI) arrived at around 9:00 a.m. and reported that a certain *alias* Bumski was engaged in the illicit sale of dangerous drugs in *Barangay* Pag-asa, Quezon City. PO2 Soriano immediately relayed this information to Police Chief Inspector Joseph De Vera (P/C Insp. De Vera). A surveillance operation conducted the same day on *alias* Bumski, who turned out to be the appellant, confirmed the report. Thus, a police team was formed to conduct a buy-bust operation. PO2 Soriano was designated as poseur-buyer while PO2 Richard Vecida, PO1 Alexander Pancho, PO1 Alvin Pineda (PO1 Pineda) and P/C Insp. De Vera would serve as his backup.

At around 2:45 p.m. of September 3, 2003, the team arrived at Road 10, *Barangay* Pag-asa, Quezon City. PO2 Soriano and the CI proceeded to appellant's house while the rest of the buy-bust team positioned themselves within viewing distance. The CI introduced PO2 Soriano to appellant as a drug dependent who wanted to purchase ₱200.00 worth of *shabu*. During their conversation, Parcon arrived and asked appellant for *shabu.* Appellant gave her a small heat-sealed plastic sachet that she placed in her coin purse. Thereafter, PO2 Soriano handed to appellant the buy-bust money consisting of two 100-peso bills and the latter, in turn, gave him a heat-sealed plastic sachet containing white crystalline substance. PO2 Soriano then immediately arrested appellant and recovered from his right hand pocket the buy bust money. At this juncture, PO2 Soriano's teammates rushed to the scene. PO1 Pineda arrested Parcon and recovered from her a plastic sachet also containing white crystalline substance.

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[12] TSN, September 6, 2004, pp. 4-8; TSN, January 12, 2005, pp. 2-5.

Appellant and Parcon were then taken to the Baler Police Station. The items recovered during the buy-bust operation were marked by PO2 Soriano as "SJ-03" and "AP-03" and turned over to the designated investigator, PO1 Vicente Calatay (PO1 Calatay). PO1 Calatay then prepared a letter-request for laboratory examination, which, together with the confiscated specimen, was brought by PO2 Soriano to the PNP Crime Laboratory.

The prosecution intended to present PO1 Calatay and PO1 Pineda as witnesses, but their testimonies were likewise dispensed with after the defense agreed to stipulate on the following facts:

PO1 Calatay

[T]hat he was the police investigator assigned to investigate these cases; that in connection with the investigation that he conducted, he took the Joint Affidavit of Arrest of PO2 Richard Vecida, PO2 Sofjan Soriano, PO1 Alvin Pineda, and PO1Alexander Pancho marked as Exhibits "F" and "F-1"; that the specimen[s] consisting of two (2) plastic sachets marked as Exhibits "B-1" and "B-2" were turned over to him by the arresting officers; that in connection therewith, he prepared the request for laboratory examination marked as Exhibit "A" and received a copy of the Chemistry Report, the original of which was earlier marked as Exhibit "C"; that the buy-bust money consisting of two (2) pieces of Php100.00 bill marked as Exhibits "D" and "E" were likewise turned over to him by the arresting officer; that he thereafter prepared a letter referral to the Office of the City Prosecutor of Quezon City marked as Exhibits "G" and "G-1".[13]

PO1 Pineda

[T]hat he was part of the buy-bust team which conducted a buy[-]bust operation on September 3, 2003 at about 2:45 a.m. at Road 10, Pag-asa, Quezon City; that he acted as back-up to PO2 Sofjan Soriano, the poseur buyer in the said operation; that he was with PO2 [Richard] Vecida and PO1 Alexander Pancho during said operation; that after the consummation of the transaction between PO2 Sofjan Soriano and Glenn Salvador, he assisted in the arrest of accused Doryann Parcon; that upon [body] search of accused Parcon, he recovered

[13] Records, p. 155.

from the latter a plastic sachet containing white crystalline substance; that said plastic sachet was marked as Exhibit "B-2".[14]

Version of the Defense

In his testimony,[15] appellant claimed that at about 11:00 p.m. of September 2, 2003, he was parking his tricycle outside his residence at 135 Road 10, Brgy. Pag-asa, Quezon City when a patrol car suddenly stopped in front of his house. Three policemen alighted, aimed their guns at him, and forced him to board their vehicle. Already inside were two men in handcuffs sitting on the floor. The police car then proceeded to Police Station 2 in Baler, Quezon City, where he and the two other men were taken to a room and frisked by policemen who demanded ₱20,000.00 from each of them. They were told to call their relatives to inform them of their arrest for engaging in a pot session. When appellant refused to oblige, PO2 Soriano said to him: "*matigas ka, hindi ka marunong makisama dapat sayo ikulong.*" He was thereafter detained and no longer saw the two men he mentioned. Two days later, he was presented to the Prosecutor's Office for inquest.

Appellant accused the police officers of falsehood but could not file a case against them since his parents were in the United States of America and he did not know anyone else who could help him. He denied knowing Parcon and the arresting officers and claimed that he saw Parcon for the first time during the inquest and the arresting officers when they arrested him.

Ruling of the Regional Trial Court

The RTC held that the evidence adduced by the prosecution established beyond reasonable doubt the guilt of appellant and Parcon for the crimes charged. It did not find impressive appellant's claim of extortion by the police officers and instead upheld the buy-bust operation which it found to have been carried out with due regard to constitutional and legal safeguards. It ruled that absent proof of evil motive on the part of the police,

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[14] *Id.* at 162.

[15] TSN, November 6, 2007, pp. 3-7.

the presumption of regularity which runs in their favor stands. Thus, the dispositive portion of the RTC's Decision:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused GLENN SALVADOR *y* BALVERDE *guilty* beyond reasonable doubt of a violation of Section 5, Article II of R.A. No. 9165 charged in Criminal Case No. Q-03-120799. Accordingly, he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of Five Hundred Thousand (₱500,000.00) PESOS.
>
> On the other hand, judgment is likewise rendered in Criminal Case No. Q-03-120800 finding accused DORY ANN PARCON *y* DEL ROSARIO *guilty* beyond reasonable doubt of a violation of Section 11, Article II of the same Act. Accordingly, she is hereby sentenced to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY as MINIMUM to FOURTEEN (14) YEARS as MAXIMUM and to pay a fine in the amount of THREE HUNDRED THOUSAND (₱300,000.00) PESOS.
>
> SO ORDERED.[16]

Ruling of the Court of Appeals

Appellant filed a Notice of Appeal.[17] In his Brief,[18] he imputed to the RTC the following errors:

> I
>
> THE TRIAL COURT SERIOUSLY ERRED IN DECLARING THE GUILT OF THE ACCUSED-APPELLANT DESPITE THE NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. No. 9165.
>
> II
>
> THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING THE FAILURE OF THE APPREHENDING TEAM TO PROVE ITS INTEGRITY.

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[16] Records, p. 241.

[17] *Id.* at 264.

[18] CA *rollo,* pp. 51-68.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT BASED ONLY ON PO2 SOFJAN SORIANO'S TESTIMONY.[19]

Aside from the prosecution's failure to prove the elements constituting the crime of illegal sale of *shabu*, appellant asserted that the apprehending officers failed to immediately conduct a physical inventory of the seized items and photograph the same as mandated by Section 21 of the Implementing Rules of RA 9165; that the chain of custody was broken since PO2 Soriano could not determine with certainty whether the plastic sachet allegedly seized from him was the same specimen subjected to laboratory examination; that the prosecution was unable to substantiate its claim that the two 100-peso bills were the same money used in purchasing *shabu* since the said bills were neither dusted with fluorescent powder nor was he subjected to fingerprint examination; that the failure to coordinate the buy-bust operation with the Philippine Drug Enforcement Agency (PDEA) was prejudicial to his substantive right; and, that PO2 Soriano and the buy-bust team did not accord him due process by failing to apprise him of his rights after he was arrested.

The People of the Philippines, on the other hand, through the Office of the Solicitor General (OSG) asserted in its Brief[20] that the Decision of the RTC must be affirmed since the guilt of appellant was established beyond reasonable doubt; that the prosecution proved all the elements of the illegal sale of drugs; that the testimonies of the police officers who conducted the buy-bust operation and their positive identification of appellant as the seller of the *shabu* prevail over the latter's denial; that the chain of custody of the illegal drug seized from appellant was sufficiently established; that the failure to use fluorescent powder in the marked money does not result in a failure of the buy-bust operation since the same is not a prerequisite to such operation; that the failure of the law enforcers to conduct a

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

[20] *Id.* at 79-115.

physical inventory or to photograph the seized items in accordance with Section 21, Article II of RA 9165 is not fatal; that the failure of the buy-bust team to coordinate with the PDEA does not invalidate appellant's arrest; that PO2 Soriano's failure to recall the markings on the specimen shows that he was not coached as a witness; that appellant's defenses of denial and frame-up are unconvincing; and that the failure to apprise appellant of his constitutional rights at the time of his arrest is not fatal since such rights apply only against extrajudicial confessions.

In its Decision, the CA affirmed the findings of the RTC. Anent the defects in the chain of custody alleged by appellant, the said court ruled that the evidence proved beyond reasonable doubt that the illegal drugs sold by appellant to PO2 Soriano was taken to the police station and marked therein and then forwarded to the crime laboratory where it was found positive for *shabu;* the marked money used in the buy-bust operation was the same money introduced in evidence; and that the failure of the arresting team to faithfully observe the requirements of conducting physical inventory and coordinating the buy-bust operation with PDEA are not fatal since the integrity and evidentiary value of the confiscated items were preserved. Thus, the dispositive portion of the CA's Decision, *viz*:

> WHEREFORE, in consideration of the foregoing premises, the instant appeal is perforce *dismissed*. Accordingly, the assailed decision dated January 15, 2008 insofar as the accused-appellant Glenn Salvador *Y* Balverde is *affirmed in toto*.
>
> SO ORDERED.[21]

Appellant filed a Notice of Appeal.[22]

On February 8, 2010, the parties were directed to file their supplemental briefs.[23] The OSG opted to adopt the brief it submitted before the CA as its appeal brief while appellant

[21] *Id.* at 137.

[22] *Id.* at 140-141.

[23] *Rollo*, p. 20.

filed a Supplemental Brief[24] which, however, contains practically the same arguments he advanced before the CA. Again, aside from questioning the finding of guilt beyond reasonable doubt against him, appellant questions the arresting officers' alleged failure to comply with the chain of custody rule.

Our Ruling

The appeal is unmeritorious.

All the elements for the prosecution of illegal sale of shabu were sufficiently established in this case.

In a successful prosecution for illegal sale of dangerous drugs, like *shabu*, the following elements must be established: "(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. x x x What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*"[25] or the illicit drug in evidence. "[T]he commission of the offense of illegal sale of dangerous drugs x x x merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place."[26]

In this case, the prosecution successfully established all the elements of illegal sale of *shabu*. The testimony of PO2 Soriano reveals that an entrapment operation was organized and conducted after they confirmed through a surveillance operation the information that appellant is engaged in drug peddling activities. Designated as a poseur-buyer, PO2 Soriano, together with the CI, approached appellant outside his residence. After having been introduced by the CI to appellant as a drug user, PO2 Soriano asked appellant if he could purchase ₱200.00 worth of

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[24] *Id.* at 27-38.

[25] *People v. Dilao*, 555 Phil. 394, 409 (2007).

[26] *People v. Alviz*, G.R. No. 177158, February 6, 2013, 690 SCRA 61, 70.

shabu. PO2 Soriano handed to appellant the marked money consisting of two ₱100 bills and the latter, in turn, gave him a plastic sachet of *shabu*. PO2 Soriano then arrested appellant and recovered the buy-bust money from the latter. Immediately thereafter his back-up who were monitoring the transaction from viewing distance arrived. Forensic examination subsequently confirmed that the contents of the sachets bought from appellant and recovered from Parcon were indeed *shabu*.

Prosecutions for illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Their narration of the incident, "buttressed by the presumption that they have regularly performed their duties in the absence of convincing proof to the contrary, must be given weight."[27] Here, the CA affirmed the RTC's ruling that the testimonies and facts stipulated upon were consistent with each other as well as with the physical evidence. Thus, there is no justification to disturb the findings of the RTC, as sustained by the CA, on the matter.

The defenses of denial and frame-up are unavailing.

The Court cannot convince itself to reverse the finding of facts of the lower courts on the basis of appellant's self-serving allegations of denial and extortion/frame-up.

Denial cannot prevail against the positive testimony of a prosecution witness. "A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters."[28]

Appellant cannot likewise avail of the defense of frame-up which "is viewed with disfavor since, like alibi, it can easily be

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[27] *People v. Llanita*, G.R. No. 189817, October 3, 2012, 682 SCRA 288, 300-301.

[28] *People v. Alberto*, G.R. No. 179717, February 5, 2010, 611 SCRA 706, 714.

concocted and is a common ploy in most prosecutions for violations of the Dangerous Drugs Law."[29] To substantiate this defense, the evidence must be clear and convincing and should show that the buy-bust team was inspired by improper motive or was not properly performing its duty.[30] Here, there is no evidence that there was ill motive on the part of the buy-bust team. In fact, appellant himself admitted that he did not know the police officers prior to his arrest. There could therefore be no bad blood between him and the said police officers. Moreover, there was no proof that the arresting officers improperly performed their duty in arresting appellant and Parcon.

Non-compliance with Section 21, Article II of Republic Act No. 9165 is not fatal.

In arguing for his acquittal, appellant heavily relies on the failure of the buy-bust team to immediately photograph and conduct a physical inventory of the seized items in his presence. In this regard, Section 21(1), Art. II of RA 9165 provides:

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

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[29] *Id.*

[30] *People v. Alviz*, *supra* note 26 at 71, citing *People v. Capalad*, G.R. No. 184174, April 7, 2009, 584 SCRA 717, 727.

who shall be required to sign the copies of the inventory and be given a copy thereof;

However, failure to strictly comply with the above procedure will not render an arrest illegal or the seized items inadmissible in evidence. Substantial compliance is allowed as provided for in Section 21(a) of the Implementing Rules and Regulations of RA 9165.[31] This provision reads:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; ***Provided, further,*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** (Emphasis supplied).

The failure of the prosecution to show that the police officers conducted the required physical inventory and photographed the objects confiscated does not *ipso facto* result in the unlawful arrest of the accused or render inadmissible in evidence the items seized. This is due to the *proviso* added in the implementing rules stating that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have not been preserved.[32] "What is crucial is

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[31] *People v. Llanita, supra* note 27 at 305.

[32] *People v. Rivera,* G.R. No. 182347, October 17, 2008, 569 SCRA 879, 898.

that the integrity and evidentiary value of the seized items are preserved for they will be used in the determination of the guilt or innocence of the accused."[33]

The links in the chain of custody must be established.

"The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established."[34] "'Chain of Custody' means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court. Such record of movements and custody of seized item shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition."[35]

There are links that must be established in the chain of custody in a buy-bust situation, namely: "*first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and, *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."[36]

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[33] *People v. Manalao*, G.R. No. 187496, February 6, 2013, 690 SCRA 106, 119.

[34] *People v. Alviz*, *supra* note 26 at 76.

[35] Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002; re Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

[36] *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 307-308.

In this case, the prosecution established clearly the integrity and evidentiary value of the confiscated *shabu*. There is no evidence that PO2 Soriano lost possession and control of the seized *shabu* from the time it was recovered from the appellant until its turnover to the police station. He marked the seized item immediately upon arrival at the police station. He turned it over to PO1 Calatay, the investigating officer, who prepared the letter request for the laboratory examination of the contents of the plastic sachets. These facts were admitted by the appellant.[37]

On the same day, PO2 Soriano personally brought the letter request and specimens to the PNP Crime Laboratory where they were received by Forensic Chemist P/Insp. Arban who conducted the examination on the specimens submitted. During the pre-trial conference, appellant admitted the purpose for which P/Insp. Arban's testimony was being offered.[38] The marked sachet of *shabu* and the marked money used in purchasing the same were both presented in evidence.

Appellant's contention that the marking of the seized sachets of *shabu* should have been made in his presence while at the scene of the crime instead of in the police station fails to impress. It is clear from the earlier cited Sec. 21(a) of the Implementing Rules and Regulations of RA 9165 that in a buy-bust situation, the marking of the dangerous drug may be done in the presence of the violator in the nearest police station or the nearest office of the apprehending team. Appellant should not confuse buy-bust situation from search and seizure conducted by virtue of a court-issued warrant. It is in the latter case that physical inventory (which includes the marking) is made at the place where the search warrant is served. Nonetheless, "non-compliance with [the] 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,

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[37] See Records, p. 155.

[38] *Id.* at 36.

shall not render void and invalid such seizures of and custody over said items."[39]

Appellant's claim that the testimony of PO2 Soriano does not deserve credence due to his failure to identify and/or recall the markings he made on the subject specimen also fails to convince. His failure to immediately recall the markings on the specimens only show that he is an uncoached witness.[40] "Such momentary lapse in memory does not detract from the credibility of his testimony as to the essential details of the incident."[41] It must also be considered that aside from the fact that police officers handle numerous cases daily, he testified three years after appellant's arrest. It is therefore understandable that PO2 Soriano could no longer easily remember all the details of the incident.

Lastly, appellant's argument that the entrapment operation is fatally flawed for failure of the buy-bust team to coordinate with the PDEA deserves scant consideration. "[C]oordination with PDEA, while perhaps ideal, is not an indispensable element of a proper buy-bust operation;"[42] it is not invalidated by mere non-coordination with the PDEA.[43]

Penalty

All told, there is no reason to disturb the finding of the RTC, as affirmed by the CA, that appellant is guilty beyond reasonable doubt of illegal sale of *shabu*, as defined and penalized under Section 5, Article II of RA 9165. Under this law, the penalty for the unauthorized sale of *shabu*, regardless of its quantity

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[39] Implementing Rules and Regulations of Republic Act No. 9165, Sec. 21(a).

[40] *People v. Dilao*, *supra* note 25 at 406.

[41] *Id.*

[42] *People v. Adrid*, G.R. No. 201845, March 6, 2013, 692 SCRA 683, 696.

[43] *Id.*, quoting *People v. Roa*, G.R. No. 186134, May 6, 2010, 620 SCRA 359, 368-370.

and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. However, with the enactment of RA 9346,[44] only life imprisonment and fine shall be imposed.[45] Thus, the penalty imposed by the RTC and affirmed by the CA is proper.

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals that affirmed *in toto* the Decision of the Regional Trial Court of Quezon City, Branch 82, insofar as the conviction of Glenn Salvador *y* Balverde for violation of Section 5, Article II of Republic Act No. 9165, as amended by Republic Act No. 9346, and the penalty of life imprisonment and payment of fine of ₱500,000.00 imposed upon him are concerned, is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

EN BANC

[A.M. No. CA-14-28-P. February 11, 2014]
(Formerly OCA IPI No. 13-208-CA-P)

ANACLETO O. VILLAHERMOSA, SR. and JULETO D. VILLAHERMOSA, *complainants, vs.* **VICTOR M. SARCIA, Executive Assistant IV and EFREN R. RIVAMONTE, Utility Worker, both from the Court of Appeals, Manila,** *respondents.*

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[44] AN ACT PROHIBITING THE IMPOSITION OF THE DEATH PENALTY IN THE PHILIPPINES.

[45] *People v. Abedin*, G.R. No. 179936, April 11, 2012, 669 SCRA 322, 339.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHOULD BE FREE FROM ANY WHIFF OF IMPROPRIETY WITH RESPECT TO THEIR DUTIES IN THE JUDICIAL BRANCH AND ALSO TO THEIR BEHAVIOR AS PRIVATE INDIVIDUALS.— Court personnel, regardless of position or rank, are expected to conduct themselves in accordance with the strict standards of integrity and morality. Indeed, the "special nature of [court personnel's] duties and responsibilities" is recognized through the adoption of a separate Code of Conduct especially for them. The acts of court personnel reflect on the judiciary. Thus, it is necessary that they uphold the ideals of the judiciary. x x x The Code of Conduct for Court Personnel requires that court personnel avoid conflicts of interest in performing official duties. It mandates that court personnel should not receive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the judiciary. "The Court has always stressed that all members of the judiciary should be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals, in order that the integrity and good name of the courts of justice shall be preserved." Court personnel cannot take advantage of the vulnerability of party-litigants.

2. ID.; ID.; ID.; ID.; GRAVE MISCONDUCT; RECEIVING MONEY FROM PARTY-LITIGANTS, A CASE OF; PENALTY.— In several cases, this court has held that the court personnel's act of soliciting or receiving money from litigants constitutes grave misconduct. The sole act of receiving money from litigants, whatever the reason may be, is antithesis to being a court employee. x x x Grave misconduct merits dismissal. In some cases, the court exercised its discretion to assess mitigating circumstances such as length of service or the fact that a transgression might be the first offense of respondents. However, due to the gravity of the acts of respondents Sarcia and Rivamonte, no mitigating circumstances can be appreciated. To the dismay of this court, it has received many complaints from party-litigants against court employees extorting money from

them. This court has already heard various reasons given by court employees for receiving money from party-litigants. Thus, this court has held that money given voluntarily is not a defense. Alleged good intentions to help party-litigants are self-serving and will not absolve the misconduct committed by court employees. There is no defense in receiving money from party-litigants. The act itself makes court employees guilty of grave misconduct. They must bear the penalty of dismissal.

3. ID.; ID.; ID.; ID.; DISHONESTY; COMMITTED WHEN ONE MISREPRESENTED HIMSELF AS A LAWYER AND DRAFTED PLEADINGS FOR A PARTY-LITIGANT FOR A FEE; DISHONESTY, DEFINED.— Respondent Sarcia misrepresented himself as a lawyer and drafted pleadings for a party-litigant for a fee. The pleadings were filed in the same court where he is employed. Respondent Sarcia discussed with a party-litigant the latter's case pending before the Court of Appeals. Worse, respondent Sarcia misrepresented to complainants Villahermosa the outcome of their case. These acts of respondent Sarcia constitute dishonesty. Dishonesty has been defined as "the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

APPEARANCES OF COUNSEL

Ramirez Loste Alegro Clave & Associates for respondents.

R E S O L U T I O N

***PER CURIAM*:**

Before this court is an administrative case involving employees of the Court of Appeals, Manila, who "transacted" with party-litigants with a pending case before the Court of Appeals.

Respondents Victor M. Sarcia, Executive Assistant IV assigned to the Office of Justice De Guia-Salvador, and Efren R. Rivamonte of the Maintenance and Utility Section, allegedly promised to help complainants Anacleto O. Villahermosa, Sr.

and Juleto Villahermosa in their pending case in the Court of Appeals and guaranteed the issuance of a temporary restraining order in their favor.[1]

Complainants Villahermosa were petitioners of a petition for review with prayer for temporary restraining order pending before the Court of Appeals.[2] Sometime during the third week of October 2008, complainants Villahermosa were eating at Diners Restaurant located on Padre Faura Street, Manila.[3] Respondent Rivamonte allegedly approached them, introduced himself as an employee of the Court of Appeals, and offered to help in their case pending before the Court of Appeals.[4] Respondent Rivamonte allegedly undertook to introduce complainants Villahermosa to a certain "Atty. Vic" who could help them with their case.[5] After they had talked, complainants Villahermosa gave respondent Rivamonte ₱3,000.00.[6]

Complainants Villahermosa and respondent Rivamonte allegedly met again, and the former gave an additional ₱2,000.00 to the latter.[7]

After several days, respondent Rivamonte introduced complainants Villahermosa to a certain "Atty. Vic" at Valiente Restaurant in front of the Court of Appeals building.[8] Complainants Villahermosa testified that "Atty. Vic" was respondent Victor Sarcia.[9] During this meeting, they allegedly gave respondent Sarcia ₱10,000.00 and respondent Rivamonte ₱5,000.00.[10]

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[1] *Rollo,* p. 170.

[2] *Id.* at 77. The case was docketed as CA-G.R. No. 105532 and was raffled to the Fourth Division.

[3] *Id.* at 71.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.* at 72.

[9] *Id.* at 235.

[10] *Id.* at 72.

To support their claim of close connection with the Court of Appeals, respondents Sarcia and Rivamonte allegedly showed complainants Villahermosa an advance copy of a resolution issued by the Fourth Division of the Court of Appeals.[11] The resolution stated that the petition was dismissed for failure to comply with certain procedural requirements.[12] Complainants Villahermosa again gave respondents Sarcia and Rivamonte ₱5,000.00 each.[13] They also allegedly gave complainants Villahermosa a list of their "clients" to bolster their representations.[14]

On November 28, 2008, respondent Sarcia allegedly provided complainants Villahermosa a compliance with the procedural requirements, which the latter filed on the same day.[15] Complainants Villahermosa again gave respondent Sarcia ₱6,500.00.[16]

Sometime during the first week of December 2008, respondent Sarcia allegedly helped complainants Villahermosa draft and prepare an amended/supplemental petition for *certiorari* that would be filed before the Court of Appeals.[17] Again, complainants Villahermosa gave respondent Sarcia ₱5,000.00.[18]

During the second week of January 2009, complainants Villahermosa received a notice to vacate from the lower court. This prompted complainants Villahermosa to inquire from respondent Rivamonte regarding the issuance of the temporary restraining order prayed for in their petition filed before the Court of Appeals.[19] Respondent Rivamonte then allegedly

[11] *Id.*

[12] *Id.* at 77-78.

[13] *Id.* at 72.

[14] *Id.* at 72, 86, 262.

[15] *Id.* at 72.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.* at 73.

advised them to give 2,000.00 to a sheriff in Makati City. Complainants Villahermosa gave respondent Rivamonte another ₱2,000.00.[20]

Complainants Villahermosa also alleged that during one of their meetings, respondent Rivamonte demanded a letter of support from them for the appointment of Justice Andres B. Reyes, Jr. as Supreme Court Justice.[21]

On February 16, 2009, complainants Villahermosa received a resolution from the Court of Appeals denying the application for a temporary restraining order.[22] They then asked respondent Sarcia about the denial but were told that it was in their favor.[23]

Upon the advice of respondent Sarcia, complainants Villahermosa drafted a memorandum.[24] The draft memorandum was handed to respondent Rivamonte after he had received another ₱500.00 from complainants Villahermosa. Respondent Sarcia then sent the "final" memorandum to complainants Villahermosa which they filed on March 3, 2009.[25]

Complainants Villahermosa inquired from the Court of Appeals regarding their prayer for the issuance of a temporary restraining order.[26] An employee of the Court of Appeals informed them that their prayer was denied.[27] Sensing that something went wrong with their transaction, complainants Villahermosa filed a joint complaint-affidavit[28] dated July 10, 2009 against respondents Sarcia and Rivamonte. The complaint-affidavit further alleged that text messages were exchanged between

[20] *Id.*

[21] *Id.*

[22] *Id.* at 74.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at 71-86.

complainants Villahermosa and respondent Sarcia on the decision on the petition pending before the Court of Appeals.[29]

On July 15, 2009, the Assistant Clerk of Court of the Court of Appeals, Manila, directed respondents Sarcia and Rivamonte to file their counter-affidavits/comments on the joint complaint-affidavit filed by complainants Villahermosa.[30]

In their counter-affidavits, respondents Sarcia and Rivamonte did not deny receiving money from complainants Villahermosa. However, they alleged that the money was given to them voluntarily for the assistance they rendered to complainants Villahermosa.[31]

Respondent Rivamonte alleged that complainants Villahermosa were the ones who approached him. Also, the money was given to him as a token of appreciation for helping "them find somebody who could give them sound legal advice."[32]

Moreover, respondent Sarcia alleged that the money was given to him for drafting the amended petition.[33] The compliance and memorandum were allegedly prepared free of charge.[34] However, respondent Sarcia denied giving complainants Villahermosa an advance copy of the resolution denying their petition.[35]

Respondent Sarcia also admitted sending the text messages to complainants Villahermosa and misrepresenting to the latter that their alternative prayer was favorably acted upon by the Court of Appeals. However, respondent Sarcia reasoned that he only sent the text messages to put a stop to complainants Villahermosa's endless questions about their case.[36]

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[29] *Id.* at 75-76.

[30] *Id.* at 87.

[31] *Id.* at 88, 98.

[32] *Id.* at 88.

[33] *Id.* at 99, 101.

[34] *Id.* at 101.

[35] *Id.* at 98.

[36] *Id.* at 100.

The Office of the Court Administrator found respondents Sarcia and Rivamonte guilty of grave misconduct and conduct prejudicial to the best interest of the service. In its report dated September 10, 2013,[37] it recommended their dismissal from service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.[38]

After a careful review of the facts of the case and the arguments of the parties, we find the recommendation of the Office of the Court Administrator in order.

Court personnel, regardless of position or rank, are expected to conduct themselves in accordance with the strict standards of integrity and morality. Indeed, the "special nature of [court personnel's] duties and responsibilities" is recognized through the adoption of a separate Code of Conduct especially for them.[39] The acts of court personnel reflect on the judiciary.[40] Thus, it is necessary that they uphold the ideals of the judiciary.

Respondents Sarcia and Rivamonte knew that complainants Villahermosa had a pending case before the Court of Appeals. As admitted by respondents Sarcia and Rivamonte, they received money from complainants Villahermosa. The Office of the Court Administrator found that the money was received through extortion from complainants Villahermosa on the promise of a favorable decision from the Court of Appeals.[41] Thus, it found respondents Sarcia and Rivamonte guilty of grave misconduct and conduct prejudicial to the best interest of the service.[42]

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[37] *Id.* at 487–497.

[38] *Id.* at 497.

[39] CODE OF CONDUCT FOR COURT PERSONNEL, Fifth Whereas clause.

[40] *Hidalgo v. Magtibay*, 483 Phil. 186, 199 (2004) [*Per Curiam, En Banc*].

[41] *Rollo*, p. 495.

[42] *Id.* at 497.

Grave misconduct was defined in *Ramos v. Limeta*[43] as

> a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules.[44] (Citations omitted)

In several cases, this court has held that the court personnel's act of soliciting or receiving money from litigants constitutes grave misconduct.[45] The sole act of receiving money from litigants, whatever the reason may be, is antithesis to being a court employee.

The Code of Conduct for Court Personnel[46] requires that court personnel avoid conflicts of interest in performing official duties.[47] It mandates that court personnel should not receive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the judiciary.[48] "The Court has always stressed that all members of the judiciary should be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals, in order that the integrity and good name of the

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[43] A.M. No. P-06-2225, November 23, 2010, 635 SCRA 701 [*Per Curiam, En Banc*].

[44] *Id.* at 706.

[45] *Office of the Court Administrator v. Diaz,* 362 Phil. 580, 591 (1999) [Per J. Kapunan, First Division]; *Narag v. Manio,* A.M. No. P-08-2579, June 22, 2009, 590 SCRA 206, 211-212 [Per J. Corona, First Division]; *Ramos v. Limeta,* A.M. No. P-06-2225, November 23, 2010, 635 SCRA 701, 707 [*Per Curiam, En Banc*]; *Canlas-Bartolome v. Manio,* 564 Phil. 307, 313-314 (2007) [*Per Curiam, En Banc*]; *Ong v. Manalabe,* 489 Phil. 96, 105 (2005) [*Per Curiam, En Banc*].

[46] A.M. No. 03-06-13-SC

[47] CODE OF CONDUCT FOR COURT PERSONNEL, Canon III, sec. 1.

[48] CODE OF CONDUCT FOR COURT PERSONNEL, Canon III, sec. 2 (b).

courts of justice shall be preserved."[49] Court personnel cannot take advantage of the vulnerability of party-litigants.

Grave misconduct merits dismissal.[50] In some cases, the court exercised its discretion to assess mitigating circumstances such as length of service or the fact that a transgression might be the first offense of respondents. However, due to the gravity of the acts of respondents Sarcia and Rivamonte, no mitigating circumstances can be appreciated.

To the dismay of this court, it has received many complaints from party-litigants against court employees extorting money from them. This court has already heard various reasons given by court employees for receiving money from party-litigants. Thus, this court has held that money given voluntarily is not a defense.[51] Alleged good intentions to help party-litigants are self-serving and will not absolve the misconduct committed by court employees.[52]

There is no defense in receiving money from party-litigants. The act itself makes court employees guilty of grave misconduct. They must bear the penalty of dismissal.

Indeed, "[a]s a court employee, [one] should be more circumspect in [one's] behavior and should [steer] clear of any situation casting the slightest of doubt on [one's] conduct."[53]

We note further the following admitted acts of respondent Sarcia, which merit on their own the penalty of dismissal.

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[49] *Anonymous Letter-Complaint against Atty. Miguel Morales, Clerk of Court, MTC, Manila,* 592 Phil. 102, 118 (2008) [Per J. Austria-Martinez, *En Banc*] (Citation omitted).

[50] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, sec. 46, par. A, 3.

[51] *Sanga v. Alcantara,* A.M. No. P-09-2657, January 25, 2010, 611 SCRA 1, 10 [*Per Curiam, En Banc*].

[52] *Sabado, Jr. v. Jornada,* A.M. No. P-07-2344, April 15, 2009, 585 SCRA 12, 17 [*Per Curiam, En Banc*].

[53] *Id.*

Respondent Sarcia misrepresented himself as a lawyer and drafted pleadings for a party-litigant for a fee. The pleadings were filed in the same court where he is employed. Respondent Sarcia discussed with a party-litigant the latter's case pending before the Court of Appeals. Worse, respondent Sarcia misrepresented to complainants Villahermosa the outcome of their case.

These acts of respondent Sarcia constitute dishonesty.

Dishonesty has been defined as "the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[54]

Complainants Villahermosa should have been told that court personnel cannot disclose information regarding a pending case, which is not yet public. However, respondent Sarcia did not do so and chose to lie and fabricate the outcome of a case. This, we cannot tolerate.

WHEREFORE, respondents Victor M. Sarcia and Efren R. Rivamonte are found GUILTY of **GRAVE MISCONDUCT**. Respondent Victor M. Sarcia is further found GUILTY of **SERIOUS DISHONESTY.** Respondents Sarcia and Rivamonte are **DISMISSED FROM THE SERVICE** with forfeiture of retirement benefits and perpetual disqualification from holding public office in any branch or instrumentality of the government, including government-owned or controlled corporations.

Let a copy of this decision be forwarded to the Department of Justice for the filing of the appropriate criminal action, if warranted.

SO ORDERED.

Sereno, C.J., 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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[54] *Mallonga v. Manio,* A.M. No. P-07-2298, April 24, 2009, 586 SCRA 335, 342 [Per J. Leonardo-De Castro, *En Banc*] (Citation omitted).

EN BANC

[G.R. No. 173386. February 11, 2014]

DEPARTMENT OF AGRARIAN REFORM, now represented by OIC-SEC. NASSER PANGANDAMAN, *petitioner, vs.* **TRINIDAD VALLEY REALTY & DEVELOPMENT CORPORATION, FRANNIE GREENMEADOWS PASTURES, INC., ISABEL GREENLAND AGRI-BASED RESOURCES, INC., ISABEL GREENMEADOWS QUALITY PRODUCTS, INC., ERNESTO BARICUATRO, CLAUDIO VILLO and EFREN NUEVO,** *respondents.*

[G.R. No. 174162. February 11, 2014]

GRACE B. FUA, in her capacity as the PROVINCIAL AGRARIAN REFORM OFFICER OF NEGROS ORIENTAL, JOSELIDO S. DAYOHA, JESUS S. DAYOHA and RODRIGO S. LICANDA, *petitioners, vs.* **TRINIDAD VALLEY REALTY AND DEVELOPMENT CORPORATION, FRANNIE GREENMEADOWS PASTURES, INC., ISABEL GREENLAND AGRI-BASED RESOURCES, INC., ISABEL EVERGREEN PLANTATIONS, INC., MICHELLE FARMS, INC. ISABEL GREENMEADOWS QUALITY PRODUCTS, INC., ERNESTO BARICUATRO, CLAUDIO VILLO and EFREN NUEVO,** *respondents.*

[G.R. No. 183191. February 11, 2014]

TRINIDAD VALLEY REALTY & DEVELOPMENT CORPORATION, FRANNIE GREENMEADOWS PASTURES, INC., ISABEL GREENLAND AGRI-BASED RESOURCES, INC., ISABEL GREENMEADOWS QUALITY PRODUCTS, INC., ERNESTO BARICUATRO, CLAUDIO VILLO and

EFREN NUEVO, *petitioners, vs.* **THE REPUBLIC OF THE PHILIPPINES and THE LAND REGISTRATION AUTHORITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; DETERMINED BY LAW AND THE ALLEGATIONS OF THE COMPLAINT; JURISDICTION, ONCE VESTED, REMAINS VESTED IRRESPECTIVE OF WHETHER OR NOT THE PLAINTIFF IS ENTITLED TO RECOVER UPON ALL OR SOME OF THE CLAIMS ASSERTED IN THE COMPLAINT.— It is a cardinal principle in remedial law that the jurisdiction of a court over the subject matter of an action is determined by the law in force at the time of the filing of the complaint and the allegations of the complaint. Jurisdiction is determined exclusively by the Constitution and the law and cannot be conferred by the voluntary act or agreement of the parties. It cannot also be acquired through or waived, enlarged or diminished by their act or omission, nor conferred by the acquiescence of the court. It is neither for the court nor the parties to violate or disregard the rule, this matter being legislative in character. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); ***CERTIORARI*****; MAY BE AVAILED OF TO ASSAIL THE DECISIONS OR AWARDS OF THE DEPARTMENT OF AGRARIAN REFORM ON ANY AGRARIAN DISPUTE OR ANY MATTER PERTAINING TO THE APPLICATION OR INTERPRETATION OF AGRARIAN REFORM LAWS; CASE AT BAR.—** Section 54 of RA 6657

leaves no room for doubt that decisions, orders, awards or rulings of the DAR may be brought to the CA by *certiorari* and not with the RTC through an ordinary action for cancellation of title, as in the instant case x x x. An examination of the records in the instant case would show that Trinidad Valley Realty and Development Corporation had actually brought the matter to the DAR *prior* to its filing of the original and amended petitions with the RTC. The x x x incidents on record reveal an acknowledgment by Trinidad Valley Realty and Development Corporation that the case indeed involves issues relating to the application, implementation, enforcement or interpretation of RA 6657 x x x. [The] Order which was issued by the then DAR OIC-Secretary was not appealed by protestant Trinidad Valley Realty and Development Corporation to the CA. This Order is exactly in the nature of any such "decision, order, award or ruling" of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform which may be brought to the CA by *certiorari*, except as otherwise provided in RA 6657, within fifteen (15) days from receipt thereof - and not to the RTC. It is also significant to note that in the proceedings before the DAR involving the protest of Trinidad Valley Realty and Development Corporation, the issue on the unconstitutionality of the subject administrative issuances promulgated to implement RA 6657 was never raised - an issue that must have been raised at the earliest possible opportunity.

3. ID.; ID.; ID.; ALL CONTROVERSIES ON THE IMPLEMENTATION THEREOF FALL UNDER THE JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM EVEN THOUGH THEY RAISE QUESTIONS THAT ARE ALSO LEGAL OR CONSTITUTIONAL IN NATURE.— The case at bar deals with acts of the DAR and the application, implementation, enforcement, or interpretation of RA 6657 - issues which do not involve the "special jurisdiction" of the RTC acting as a Special Agrarian Court. Hence, when the court *a quo* heard and decided the instant case, it did so without jurisdiction. The Court likewise ruled in the similar case of *DAR v. Cuenca* that "[a]ll controversies on the implementation of the Comprehensive Agrarian Reform Program (CARP) fall under the jurisdiction of the Department of Agrarian Reform (DAR),

even though they raise questions that are also legal or constitutional in nature." x x x The legal recourse undertaken by Trinidad Valley Realty and Development Corporation, *et al.* is on all-fours with the remedy adopted by the private respondents in *Cuenca.* In this case, Trinidad Valley Realty and Development Corporation, *et al.* cloaked the issue as a constitutional question - assailing the constitutionality of administrative issuances promulgated to implement the agrarian reform law - in order to annul the titles issued therein. In *Cuenca,* private respondents assailed the constitutionality of EO 45 in order to annul the Notice of Coverage issued therein. The only difference is that in *Cuenca*, private respondents directly filed with the RTC their complaint to obtain the aforesaid reliefs while in this case, Trinidad Valley Realty and Development Corporation, *et al*. filed their original petition for *certiorari* with the RTC *after* the protest of Trinidad Valley Realty and Development Corporation against the coverage of its landholding under CARP was dismissed by the DAR Regional Director and such dismissal was affirmed by DAR OIC Secretary Jose Mari B. Ponce. But in both cases, it is evident that the constitutional angle was an attempt to exclude the cases from the ambit of the jurisdictional prescriptions under RA 6657. The Court further stated in *Cuenca* that "in case of doubt, **the jurisprudential trend is for courts to refrain from resolving a controversy involving matters that demand the special competence of administrative agencies, 'even if the question[s] involved [are] also judicial in character.'**" In the instant case, however, there is hardly any doubt that the RTC had no jurisdiction over the subject matter of the case. Consequently, it did not have authority to perform any of the following: order the admission of the amended petition of Trinidad Valley Realty and Development Corporation, *et al.*, decide the amended petition on the merits, or issue a permanent prohibitory injunction. In any case, such injunction issued by the RTC is a nullity in view of the express prohibitory provisions of the CARP and this Court's Administrative Circular Nos. 29-2002 and 38- 2002 enjoining all trial judges to strictly observe Section 68 of RA 6657 x x x.

APPEARANCES OF COUNSEL

Louie L. Naranjo for petitioners in G.R. No. 174162.
Benjamin R. Militar for Trinidad Valley Realty & Dev't. Corp., *et al*. in G.R. No. 183191.
Delfin B. Samson for DAR in G.R. No. 173386.

D E C I S I O N

VILLARAMA, JR., *J.*:

The consolidated petitions before us raise intertwined issues of jurisdiction over cases involving the implementation of Republic Act No. 6657, otherwise known as the "Comprehensive Agrarian Reform Law of 1988" (hereinafter, RA 6657). The petitions likewise question whether a regional trial court may exercise jurisdiction if the case also assails the constitutionality of administrative orders, regulations and other related issuances implementing the said law.

The following facts are common to the three cases under consolidation:

Trinidad Valley Realty and Development Corporation, Frannie Greenmeadows Pastures, Inc., Isabel Greenland Agri-based Resources, Inc., Isabel Evergreen Plantations, Inc., Michelle Farms, Inc., Isabel Greenmeadows Quality Products, Inc., Ernesto Baricuatro, Claudio Villo, and Efren Nuevo (hereinafter, Trinidad Valley Realty and Development Corporation, *et al*.) are the registered owners of a parcel of land in Vallehermoso, [1] Negros Oriental. The landholding consists of a total area of 641.7895 hectares - about 200 hectares thereof are devoted to the cultivation of sugar cane. The Department of Agrarian Reform (DAR) placed 479.8905 hectares of the said landholding under the coverage of RA 6657 between March 1995 and July 2000. Certificates of Land Ownership Award (CLOAs) and Transfer

[1] Also referred to as Villahermoso in some parts of the records.

Certificates of Title (TCTs) were subsequently issued in favor of the agrarian reform beneficiaries. [2]

On June 10, 2004, Trinidad Valley Realty and Development Corporation, *et al*. filed before the Regional Trial Court (RTC), Branch 64, Guihulngan, Negros Oriental, a Petition for Declaration of Unconstitutionality Through *Certiorari*, Prohibition and *Mandamus* with Prayer for Preliminary Prohibitory Injunction and Restraining Order [3] against the Land Registration Authority (LRA), the DAR, and the beneficiaries under the Comprehensive Agrarian Reform Program (CARP), docketed as **Special Civil Action** No. **04-02-V.** In their Petition, Trinidad Valley Realty and Development Corporation, *et al*. made the following main allegations:

1. That the DAR committed grave abuse of discretion amounting to lack of jurisdiction when it committed the following acts: it passed Administrative Order No. 12, Series of 1989 and other related issuances which allowed the DAR to unilaterally choose beneficiaries other than those intended by the Constitution as beneficiaries; it subjected Trinidad Valley Realty and Development Corporation, *et al.*'s properties to compulsory acquisition, when it ordered the Land Bank to determine the valuation of Trinidad Valley Realty and Development Corporation, *et al.*' s land without any judicial pronouncement on just compensation; and, it unilaterally ordered the cancellation of petitioner's title without court intervention when it issued final CLOAs to beneficiaries who are not yet owners of the land and without any court proceeding.
2. The valuation by Land Bank is not just compensation.
3. The Register of Deeds cannot cancel Trinidad Valley Realty and Development Corporation, *et al.*'s title without a court order.

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[2] *Rollo* (G.R. No. 183191), p. 121.

[3] Records, Vol. 1, pp. 7-77.

4. The Land Bank, the LRA and the Register of Deeds also committed grave abuse of discretion when they cooperated to commit the aforementioned acts. [4]

The DAR [5] filed its Answer [6] asserting that (a) jurisdiction over all agrarian reform matters is exclusively vested in the DAR; (b) the Department of Agrarian Reform Adjudication Board (DARAB) Rules provides that the power to cancel or annul CLOAs is vested in the DARAB; and the jurisdiction of the RTC in agrarian reform matters is limited only to the determination of just compensation and prosecution of all criminal offenses under RA 6657; (c) the RTC has no jurisdiction over petitions for *certiorari*, prohibition and *mandamus* in agrarian reform cases, which is vested by Section 54 of RA 6657, in the Court of Appeals (CA); (d) the transfer of ownership and physical installation of the beneficiaries is authorized by RA 6657 as laid down in *Association of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform*; [7] (e) the petition is defective in form and substance; and (f) the CLOAs partake of the nature of a Torrens Title and their validity cannot be collaterally attacked.

Subsequently, Trinidad Valley Realty and Development Corporation, *et al*. filed a Motion for Leave to Amend Petition and for Admission of the Amended Petition [8] in order to change the nature of the action from a *special civil action* of *certiorari*, prohibition and *mandamus* to an *ordinary actio*n of annulment of land titles. The DAR, *et al*. opposed the motion in its Opposition[9] dated July 28, 2004.

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

[5] Joined by private respondents.

[6] Answer with Affirmative Defenses of Lack of Jurisdiction, *Etc*., records, Vol. 2, pp. 452-463.

[7] 256 Phil. 777 (1989).

[8] Records, Vol. 2, pp. 508-587. Received by DAR, *et al.* on July 26, 2004.

[9] Records, Vol. 3, pp. 942-945.

On August 13, 2004, the RTC conducted a hearing on the propriety of admitting the amended petition. On October 26, 2004, it issued the assailed Order[10] admitting the amended petition and ruling that it had jurisdiction over the case, *viz.*:

> WHEREFORE, this Court rules and so holds that:
>
> 1. This Court has jurisdiction over the instant case;
> 2. The Amended Petition is admitted and defendants may file responsive pleadings or amendments to their original answers within ten [IO] days from receipt hereof; and
> 3. The plaintiffs have not made out a case for the issuance of a temporary restraining order and/or the writ of preliminary prohibitory injunction, and therefore the plaintiffs' prayer for its issuance is denied.
>
> SO ORDERED. [11]

In an Urgent Omnibus Motion [12] dated December 2, 2004, LRA, *et al*. moved for reconsideration on the ground of lack of merit and jurisdiction. The DAR similarly filed a Motion for Reconsideration [13] dated December 8, 2004 on the same ground of lack of jurisdiction. Both motions were denied by the RTC in its Order[14] dated January 7, 2005.

In a petition for *certiorari* [15] filed with the CA, the Republic of the Philippines, represented by the Solicitor General, and the LRA sought to annul the subject Order of the RTC on the following grounds: (1) the RTC does not have jurisdiction over the petition and amended petition of Trinidad Valley Realty and Development Corporation, *et al.* in view of Section 54 of RA 6657; (2) the RTC committed grave abuse of discretion in

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[10] *Id.* at 1232-1244. Penned by Presiding Judge Mario O. Trinidad.

[11] *Id.* at 1244.

[12] *Id.* at 1332-1343.

[13] *Id.* at 1346-1358.

[14] Records, Vol. 4, pp. 1573-1574.

[15] *Rollo* (G.R. No. 183191), pp. 355-388.

admitting the amended petition; and (3) the RTC did not acquire jurisdiction over the amended petition as the correct docket and other legal fees had not been paid.

By Decision[16] and Resolution[17] dated June 28, 2007 and May 21, 2008, respectively, the CA reversed and set aside the Order of the RTC, *viz*.:

> **WHEREFORE,** in view of all the foregoing, the instant Petition is hereby **GRANTED** and the assailed Order of the court *a quo* is hereby **ANNULLED AND SET ASIDE.** The court *a quo* is hereby directed to **DISMISS** Civil Action No. 04-02-V, entitled "Trinidad Valley Realty and Development Corporation, *et al.* vs. The Honorable Jose Mari B. Ponce, *et al.*" for lack of jurisdiction over the subject matter.
>
> **SO ORDERED.**[18]

The CA ratiocinated that the RTC did not have jurisdiction over both the petition and amended petition filed by Trinidad Valley Realty and Development Corporation, *et al.* in view of Section 54 of RA 6657 which clearly provides that it is the CA, and not the RTC, which has jurisdiction over the case. [19] The CA also reiterated the ruling of this Court in the landmark case of *Association of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform*[20] declaring the "Comprehensive Agrarian Reform Law" constitutional. Quoting the following portion of the landmark decision, the CA stressed that the ruling therein has, in effect, foreclosed any possible attack on the constitutionality of the law, *viz*.:

> By the decision we reach today, all major legal obstacles to the comprehensive agrarian reform program are removed, to clear the way for the true freedom of the farmer. We may now glimpse the day he will be released not only from want but also from the exploitation

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[16] *Id.* at 120-132.

[17] *Id.* at 24-27.

[18] *Id.* at 131.

[19] *Id.* at 124-129.

[20] *Supra* note 7.

and disdain of the past and from his own feelings of inadequacy and helplessness. At last his servitude will be ended forever. At last the farm on which he toils will be his farm. It will be his portion of the Mother Earth that will give him not only the staff of life but also the joy of living. And where once it bred for him only deep despair, now can he see in it the fruition of his hopes for a more fulfilling future. Now at last can he banish from his small plot of earth his insecurities and dark resentments and 'rebuild in it the music and the dream. [21]

On the issue of whether the RTC committed grave abuse of discretion in admitting the amended petition, the CA declared that while the Rules of Court allow amendments which substantially alter the nature of the cause of action in order to serve the higher interest of substantial justice, prevent delay and promote the objective of the Rules to secure a just, speedy and inexpensive disposition of every action and proceeding, the admission by the RTC of the amended petition was not proper and should have been denied. [22] Prescinding from its ruling that the RTC did not have jurisdiction over the original petition, the CA held that the RTC consequently did not have authority to order the admission of Trinidad Valley Realty and Development Corporation, *et al.*' s amended complaint in order for it to acquire jurisdiction over the subject matter. [23] In view of these dispositions, the CA deemed it unnecessary to discuss the third issue.

Trinidad Valley Realty and Development Corporation, *et al.* moved for reconsideration [24] and reiterated that judicial review was within the jurisdiction of the lower court and that the requirements for raising the constitutionality issues had been complied with. It also stressed that the amendment of the complaint did not change the cause of the action of unconstitutionality and that the case was already pending before this Court.

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[21] *Rollo* (G.R. No. 183191), p. 124.

[22] *Id.* at 129-130.

[23] *Id.* at 130.

[24] *Id.* at 462-491.

The CA denied the motion for reconsideration on the ground that no new arguments were raised to warrant a reexamination of its ruling on the issue of the lack of jurisdiction of the RTC. [25] As to the averment of Trinidad Valley Realty and Development Corporation, *et al*. that the CA' s assailed June 28, 2007 Decision was already rendered moot and academic by a judgment of the RTC dated October 17, 2005 in Civil Case No. 04-013-V, entitled "*Trinidad Valley Realty and Development Corporation, et al. v. The Honorable Rene Villa*, in his capacity as Secretary of DAR, *et al*.," the CA pointed out that what was challenged in the petition filed before it was **Special Civil Action No. 04-02-V**, entitled "*Trinidad Valley Realty and Development Corporation, et al. v. Jose Mari B. Ponce, in his capacity as Secretary of DAR, et al*." [26] The CA further stated in its assailed Resolution, *viz*.:

> Be that as it may, it must be emphasized that the subject matter of the instant petition is the jurisdiction of the court a quo to try and hear [Special Civil Action] No. 04-02-V. Accordingly, this Court ruled that the court *a quo* does not have jurisdiction to try the case.
>
> Granting *arguendo* that Civil Case No. 04-013-V and [Special Civil Action] No. 04-02-V are the same, the June 28, 2007 Decision of this Court cannot be rendered moot and academic by the judgment of the court *a quo* in Civil Case No. 04-013-V. As correctly pointed out by the Office of the Solicitor General, a decision rendered by a court or tribunal without jurisdiction is null and void; hence, it's as if no decision was ever rendered by the court *a quo*.
>
> Accordingly, the instant Motion for Reconsideration is hereby DENIED. [27]

Trinidad Valley Realty and Development Corporation, *et al.* now appeals to this Court by way of Petition for Review on *Certiorari* [28] raising substantially the principal issue of whether

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[25] *Id.* at 24-27.

[26] *Id.* at 25-26.

[27] *Id.* at 26.

[28] *Id.* at 33-106.

the RTC has jurisdiction over the original and amended petitions.

We shall resolve this issue in consolidation with two other petitions filed before this Court - G.R. No. 173386 (*DAR, et al. v. Trinidad Valley Realty & Development Corporation, et al.*) and G.R. No. 174162 (*Grace B. Fua, in her capacity as Provincial Reform Officer of Negros Oriental, et al. v. Trinidad Valley Realty & Development Corporation, et al.*). Both petitions stemmed from the assailed Decision[29] later issued by the RTC dated October 17, 2005 - the same RTC Decision that Trinidad Valley Realty and Development Corporation, *et al*. had brought to the attention of the CA in their motion for reconsideration. The RTC Decision was reached after it issued its assailed Order in Special Civil Action No. 04-02-V - ruling that it had jurisdiction over the original petition (special civil action of *certiorari*, prohibition and *mandamus*) and therefore had the authority to admit the amended petition (ordinary action of annulment of land titles). Pre-trial proceeded in the ordinary action which was **re-docketed as Civil Case No. 04-013-V**. There being no factual issue involved, the case was submitted for judgment based on the pleadings. The resulting assailed judgment on the pleadings declared as unconstitutional and void the following administrative issuances of the DAR and the LRA, Executive Order No. 405, and other related issuances, viz.:

i. Administrative Order No. 10, Series of 1989 - Registration/ Selection of Beneficiaries - DAR chooses beneficiaries under A.O. No. 10, Series of 1989 using as its basis, Section 22 of RA 6657 allowing farmers, farmworkers, or any person who is landless to become a beneficiary of any private agricultural land. Under this Administrative Order, not only farmworkers or farmers working on a particular land are entitled to become beneficiaries, but any person who is landless, in short a non-tiller of the land, as long as he is capable and willing to become such a beneficiary.

ii. Administrative Orders No. 12, Series of 1989, No. 9, Series of 1990 and No. 2, Series of 1996 allows DAR to place under

[29] *Id.* at 492-605.

compulsory coverage all private agricultural land by merely sending a notice of coverage; these administrative orders covering the same subjects, supersede one another from its earliest which is A.O. 12, Series of 1989, through Administrative Order No. 9, and polished into its last reincarnation, Administrative Order No 2, Series of 1996. Under these Orders, DAR granted itself the following powers which it has enforced: [l] to compulsorily acquire all private agricultural lands; [2] to order Land Bank to determine just compensation; and [3] to cancel the landowner's title and transfer the land to the Republic of the Philippines [RP];

iii. Administrative Order No. 10, Series of 1990 authorizes DAR to cancel the RP title and issue final titles called Certificate of Land Ownership Award [CLOAs] which in turn it uses as basis to distribute private agricultural lands covered to beneficiaries;

iv. Joint DAR-LRA Memorandum Circular No. 20, Series of 1997 and all other previous DAR-LRA Memorandum Circulars are a series of agreements whereby DAR m1d the LRA agreed that the Registers of Deeds under LRA shall cancel landowners' titles upon the request or directive of DAR. and thereafter register final titles to beneficiaries called Certificates of Land Ownership Award;

v. Executive Order No. 405 promulgated by President Aquino which is interpreted by DAR as authorizing Land Bank to determine just compensation;

vi. All other Administrative Orders and related issuances that prescribe substantially the same procedure as the above-foregoing Orders and Regulations existing or to be issued by the DAR with the same intent and effect in prescribing a non-judicial process of land acquisition. [30]

The RTC also annulled the CLOAs issued by the DAR and issued a permanent prohibitory injunction [31] restraining private

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[30] *Id.* at 603-604.

[31] In an Order dated April 18, 2006, the RTC granted an Ex-Parte Motion for Enforcement of Writ of Permanent Injunction filed by Trinidad Valley Realty and Development Corporation, et al. Original Records, Vol. 1, pp. 1-5.

defendant beneficiaries, DAR defendants and other entities from exercising acts of possession, dispossession or ownership over any portion of the subject property, and preventing the DAR from subjecting the landholdings of Trinidad Valley Realty and Development Corporation, *et al.* under the coverage of agrarian reform through the implementation *of the administrative orders and issuances.* [32]

Hence, the Petitions for Review on *Certiorari* filed in G.R. Nos. 173386 [33] and 174162 [34] posing the same intersecting jurisdictional question in these consolidated cases: Whether the RTC had jurisdiction over the original and amended petitions filed by Trinidad Valley Realty and Development Corporation, *et al.*

It is a cardinal principle in remedial law that the jurisdiction of a court over the subject matter of an action is determined by the law in force at the time of the filing of the complaint and the allegations of the complaint. [35] Jurisdiction is determined exclusively by the Constitution and the law and cannot be conferred by the voluntary act or agreement of the parties. It cannot also be acquired through or waived, enlarged or diminished by their act or omission, nor conferred by the acquiescence of the court. It is neither for the court nor the parties to violate or disregard the rule, this matter being legislative

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[32] *Rollo* (G.R. No. 183191), pp. 600-605.

[33] In G.R. No. 173386, petitioners raised two main issues: that the RTC has no jurisdiction over petitions for certiorari involving acts of the DAR; and, that the RTC erred in ruling that Trinidad Valley Realty and Development Corporation, et al. did not resort to forum shopping.

[34] In G.R. No. 174162, petitioners raised the same issues posited in G.R. No. 173386.

[35] *DAR v. Paramount Holdings Equities, Inc., et al.*, G.R. No. 176838, June 13, 2013, p. 8; *Padlan v. Dinglasan*, G.R. No. 180321, March 20, 2013, 694 SCRA 91, 98-99; *Bank of Commerce v. Planters Development Bank*, G.R. Nos. 154470-71 and G.R. Nos. 154589-90, September 24, 2012, 681 SCRA 521, 548-549; *Mendoza v. Germino*, G.R. No. 165676, November 22, 2010, 635 SCRA 537, 544. Citations omitted.

in character.[36] The nature of an action, as well as which court or body has jurisdiction over it, is determined base on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[37]

In the case at bar, the CA has correctly and succinctly synthesized that both the original petition for the "Declaration of Unconstitutionality Through *Certiorari*, Prohibition and *Mandamus* with Prayer for Preliminary Prohibitory Injunction and Restraining Order" and the amended petition for "Judicial Review Through an Action to Annul Titles, and Mandatory and Prohibitory Injunctions with Prayer for Preliminary Prohibitory Injunction and Restraining Order" contain the same allegations, *viz*. :

> x x x that beneficiaries are not those intended by the Constitution as beneficiaries; that subject properties cannot be subjected to compulsory acquisition because its farm operations are under labor administration; that the valuation of the land was not judicially determined; that the cancellation of petitioners' title over the subject properties and the issuance of Certificates of Land Ownership Award were effected without any court intervention; that a case for expropriation should have been filed in court; and that certain DAR Administrative Orders are unconstitutional.[38]

We also agree with the assessment of the appellate court that these allegations assail the acts of the DAR in awarding the

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[36] *Mendoza v. Germino and Germino, id.*, citing *OCA v. Court of Appeals*, 428 Phil. 696, 701-702 (2002).

[37] *Padlan v. Dinglasan*, *supra* note 35, citing *City of Dumaguete v. Philippine Ports Authority*, G.R. No. 168973, August 24, 2011, 656 SCRA 102, 119.

[38] *Rollo* (G.R. No. 183191), p. 125.

CLOAs to the beneficiaries and question the procedure in fixing the compensation - acts which pertain to the very "application, implementation, enforcement or interpretation" [39] of RA 6657 or the agrarian reform law and other pertinent laws on agrarian reform.

Section 54 of RA 6657 leaves no room for doubt that decisions, orders, awards or rulings of the DAR may be brought to the CA by *certiorari* and not with the RTC through an ordinary action for cancellation of title, as in the instant case:

> SECTION 54. *Certiorari.* - Any decision, order, award or ruling of the DAR **on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by *certiorari*** except as otherwise provided in this Act within fifteen (15) days from the receipt of a copy thereof.
>
> The findings of fact of the DAR shall be final and conclusive if based on substantial evidence. (Emphasis and underscoring supplied.)

An examination of the records [40] in the instant case would show that Trinidad Valley Realty and Development Corporation had actually brought the matter to the DAR prior to its filing of the original and amended petitions with the RTC. The following incidents on record reveal an acknowledgment by Trinidad Valley Realty and Development Corporation that the case indeed involves issues relating to the application, implementation, enforcement or interpretation of RA 6657, *viz.*:

1. Trinidad Valley Realty and Development Corporation had originally filed a case with the DARAB for Cancellation of CLOA, Injunction and Damages with prayer for the issuance of a Temporary Restraining Order. The subject property covered the same landholding in the instant case covering the same area of 641.7895

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[39] Sec. 54, RA 6657.

[40] See Order dated March 17, 2004, issued by then OIC-Secretary Jose Mari B. Ponce, *rollo* (G.R. No. 174162), Vol. I, pp. 297-302.

hectares. The case was dismissed by the DAR Provincial Adjudicator in an Order dated March 31, 1997 on the ground that the matters raised by Trinidad Valley Realty and Development Corporation involved the administrative implementation of RA 6657. The case was then treated as a protest against CARP coverage. It was again dismissed in an Order dated November 19, 1997 for lack of merit.[41]

2. A Motion for Reconsideration dated December 15, 1997 was filed seeking for a reversal and exemption of those areas with a slope of 18% and above from CARP coverage. An addendum to the Motion for Reconsideration dated February 2, 1998 was also filed wherein Trinidad Valley Realty and Development Corporation manifested, among others, its voluntary offer to sell to the government a one hundred-hectare portion of the subject land. For utter lack of merit, both motions were dismissed by the DAR Regional Director on August 7, 1998 and the order dated November 19, 1997 was affirmed. [42]

3. On September 25, 1998, an appeal was filed before the Office of the Secretary. An Appeal Memorandum later filed on November 10, 1998 raised the following issue on whether the subject landholding was properly subjected to CARP coverage. The Office of the Secretary denied the appeal for lack of merit in an Order dated March 17, 2004. The Order stated that the subject lands have a slope of 18% and were already developed as of June 15, 1988. Furthermore, the Order also stated that at the time of the resolution of the Appeal therein, the subject land was already being occupied by farmer-beneficiaries with their respective CLOAs which cannot be attacked collaterally. The Order also held that Trinidad Valley Realty and Development Corporation failed to prove, by substantial evidence, that the areas that it wanted to be exempted from CARP coverage due

[41] *Id.* at 298.

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

> to the 18% slope limitation are nonproductive and less suitable for agricultural use.[43]

This Order which was issued by the then DAR OIC-Secretary was not appealed by protestant Trinidad Valley Realty and Development Corporation to the CA. This Order is exactly in the nature of any such "decision, order, award or ruling" of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform which may be brought to the CA by *certiorari*, except as otherwise provided in RA 6657, within fifteen (15) days from receipt thereof — and not to the RTC. It is also significant to note that in the proceedings before the DAR involving the protest of Trinidad Valley Realty and Development Corporation, the issue on the unconstitutionality of the subject administrative issuances promulgated to implement RA 6657 was never raised — an issue that must have been raised at the earliest possible opportunity.

The jurisdictional shifts on the authority to hear and decide agrarian reform matters is instructive:

> x x x in 1980, upon the passage of Batas Pambansa Blg. 129, otherwise known as the Judiciary Reorganization Act, the Courts of Agrarian Relations were integrated into the Regional Trial Courts and the jurisdiction of the former was vested in the latter courts.
>
> However, with the enactment of Executive Order No. 229, which took effect on August 29, 1987, the Regional Trial Courts were divested of their general jurisdiction to try agrarian reform matters. The said jurisdiction is now vested in the Department of Agrarian Reform.
>
> Republic Act No. 6657, the Comprehensive Agrarian Reform Law, which took effect on June 15, 1988, contains provisions which evince and support the intention of the legislature to vest in the Department of Agrarian Reform exclusive jurisdiction over all agrarian reform matters.
>
> Section 50, of said law substantially reiterates Section 17, of Executive Order No. 229, vesting in the Department of Agrarian Reform

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[43] *Id.* at 299-301.

exclusive and original jurisdiction over all matters involving the implementation of agrarian reform, to wit:

> "SECTION 50. Quasi-Judicial Powers of the DAR. The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR)."

In addition, Sections 56 and 57, thereof provide for the designation by the Supreme Court of at least one (1) branch of the Regional Trial Court within each province to act as a special agrarian court. The said special court shall have original and exclusive jurisdiction only over petitions for the determination of just compensation to landowners and the prosecution of criminal offenses under said Act. Said provisions thus delimit the jurisdiction of the Regional Trial Courts in agrarian cases only to these two instances. Thus:

> "SEC. 56. Special Agrarian Court. - The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court.
>
> "The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, the Supreme Court shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations.x x x."
>
> "SEC. 57. Special Jurisdiction. - The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act.
>
> "The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision."[44]

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[44] *Rollo* (G.R. No. 183191), pp. 127-128.

The case at bar deals with acts of the DAR and the application, implementation, enforcement, or interpretation of RA 6657 - issues which do not involve the "special jurisdiction" of the RTC acting as a Special Agrarian Court. Hence, when the court a quo heard and decided the instant case, it did so without jurisdiction.

The Court likewise ruled in the similar case of *DAR vs. Cuenca*[45] that "[a]ll controversies on the implementation of the Comprehensive Agrarian Reform Program (CARP) fall under the jurisdiction of the Department of Agrarian Reform (DAR), even though they raise questions that are also legal or constitutional in nature." In said case, it was noted that the main thrust of the allegations in the Complaint was the propriety of the Notice of Coverage and "not x x x the 'pure question of law' spawned by the alleged unconstitutionality of EO 405 - but x x x the annulment of the DAR's Notice of Coverage." [46] The Court thus held that:

> To be sure, the issuance of the Notice of Coverage constitutes the first necessary step towards the acquisition of private land under the CARP. Plainly then, the propriety of the Notice relates to the implementation of the CARP, which is under the quasi-judicial jurisdiction of the DAR. **Thus, the DAR could not be ousted from its authority by the simple expediency of appendin an alleged constitutional or legal dimension to an issue that is clearly agrarian.** [47] (Emphasis supplied)

The legal recourse undertaken by Trinidad Valley Realty and Development Corporation, *et al*. is on all-fours with the remedy adopted by the private respondents in *Cuenca*. In this case, Trinidad Valley Realty and Development Corporation, *et al*. cloaked the issue as a constitutional question – assailing the constitutionality of administrative issuances promulgated to implement the agrarian reform law - in order to annul the titles issued therein. In *Cuenca*, private respondents assailed

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[45] 482 Phil. 208, 211 (2004).

[46] *Id.* at 223.

[47] *Id.* at 226.

the constitutionality of EO 45 in order to annul the Notice of Coverage issued therein. The only difference is that in *Cuenca*, private respondents directly filed with the RTC their complaint to obtain the aforesaid reliefs while in this case, Trinidad Valley Realty and Development Corporation, *et al*. filed their original petition for *certiorari* with the RTC *after* the protest of Trinidad Valley Realty and Development Corporation against the coverage of its landholding under CARP was dismissed by the DAR Regional Director and such dismissal was affirmed by DAR OIC Secretary Jose Mari B. Ponce. But in both cases, it is evident that the constitutional angle was an attempt to exclude the cases from the ambit of the jurisdictional prescriptions under RA 6657.

The Court further stated in *Cuenca* that in case of doubt, **the jurisprudential trend is for courts to refrain from resolving a controversy involving matters that demand the special competence of administrative agencies, 'even if the question[s] involved [are] also judicial in character.'** [48] In the instant case, however, there is hardly any doubt that the RTC had no jurisdiction over the subject matter of the case. Consequently, it did not have authority to perform any of the following: order the admission of the amended petition of Trinidad Valley Realty and Development Corporation, *et al*., decide the amended petition on the merits, or issue a permanent prohibitory injunction. In any case, such injunction issued by the RTC is a nullity in view of the express prohibitory provisions of the CARP and this Court's Administrative Circular Nos. 29-2002 and 38- 2002 enjoining all trial judges to strictly observe Section 68 of RA 6657, *viz*.:

> SECTION 68. *Immunity of Government Agencies from Undue Interference.* — No injunction, restraining order, prohibition or *mandamus* shall be issued by the lower courts against the Department of Agrarian Reform (DAR), the Department of Agriculture (DA), the Department of Environment and Natural Resources (DENR), and the Department of Justice (DOJ) in their implementation of the program.

[48] *Id.*

Given our ruling that the RTC lacked jurisdiction over the instant case, we find no necessity to address the other issues raised in the three consolidated petitions.

WHEREFORE, the Petition in G.R. No. 183191 is **DENIED** for lack of merit. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 88512 dated June 28, 2007 and May 21, 2008, respectively, are hereby **AFFIRMED.** The Petitions in G.R. Nos. 173386 and 174162 are hereby **GRANTED.** The challenged Order in Special Civil Action No. 04-02-V, entitled *Trinidad Valley Realty and Development Corporation, et al. v. Jose Mari B. Ponce, in his capacity as Secretary of DAR, et al.* dated October 26, 2004 and the Decision in Civil Case No. 04-013-V, entitled *Trinidad Valley Realty and Development Corporation, et al. v. The Honorable Rene Villa, in his capacity as Secretary of DAR, et al.* dated October 1 7, 2005 of the Regional Trial Court, Branch 64, Guihulngan, Negros Oriental are hereby **ANNULLED and SET ASIDE** for lack of jurisdiction. The Regional Trial Court, Branch 64, Guihulngan, Negros Oriental is likewise ordered to **DISMISS** herein Special Civil Action No. 04-02-V and Civil Case No. 04-013-V for lack of jurisdiction. The Writ of Permanent Prohibitory Injunction dated April 18, 2006 issued by the said court by virtue of its Order on even date is hereby **LIFTED** and **SET ASIDE.**

With costs against the petitioners in G.R. No. 183191.

SO ORDERED.

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

EN BANC

[G.R. No. 176830. February 11, 2014]

SATURNINO C. OCAMPO, *petitioner, vs.* **HON. EPHREM S. ABANDO, in his capacity as Presiding Judge of the Regional Trial Court of Hilongos, Leyte, Branch 18, CESAR M. MERIN, in his capacity as Approving Prosecutor and Officer-in-Charge, ROSULO U. VIVERO, in his capacity as Investigating Prosecutor, RAUL M. GONZALEZ, in his capacity as Secretary of the Department of Justice,** *respondents.*

[G.R. No. 185587. February 11, 2014]

RANDALL B. ECHANIS, *petitioner, vs.* **HON. THELMA BUNYI-MEDINA, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 32, HON. EPHREM S. ABANDO, in his capacity as Presiding Judge of the Regional Trial Court of Hilongos, Leyte, Branch 18, CESAR M. MERIN, in his capacity as Approving Prosecutor and Officer-in-Charge, ROSULO U. VIVERO, in his capacity as Investigating Prosecutor, RAUL M. GONZALEZ, in his capacity as Secretary of the Department of Justice,** *respondents.*

[G.R. No. 185636. February 11, 2014]

RAFAEL G. BAYLOSIS, *petitioner, vs.* **HON. THELMA BUNYI-MEDINA, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 32, HON. EPHREM S. ABANDO, in his capacity as Presiding Judge of the Regional Trial Court of Hilongos, Leyte, Branch 18, CESAR M. MERIN, in his capacity as Approving Prosecutor and Officer-in-Charge, ROSULO U. VIVERO, in his capacity as Investigating Prosecutor, RAUL M. GONZALEZ, in his capacity as Secretary of the Department of Justice,** *respondents.*

[G.R. No. 190005. February 11, 2014]

VICENTE P. LADLAD, *petitioner, vs.* **HON. THELMA BUNYI-MEDINA, in her capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 32, and the PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; A SUBSTANTIVE RIGHT AND A COMPONENT OF DUE PROCESS IN THE ADMINISTRATION OF CRIMINAL JUSTICE.—** A preliminary investigation is "not a casual affair." It is conducted to protect the innocent from the embarrassment, expense and anxiety of a public trial. While the right to have a preliminary investigation before trial is statutory rather than constitutional, it is a substantive right and a component of due process in the administration of criminal justice. In the context of a preliminary investigation, the right to due process of law entails the opportunity to be heard. It serves to accord an opportunity for the presentation of the respondent's side with regard to the accusation. Afterwards, the investigating officer shall decide whether the allegations and defenses lead to a reasonable belief that a crime has been committed, and that it was the respondent who committed it. Otherwise, the investigating officer is bound to dismiss the complaint. "The essence of due process is reasonable opportunity to be heard and submit evidence in support of one's defense." What is proscribed is lack of opportunity to be heard. Thus, one who has been afforded a chance to present one's own side of the story cannot claim denial of due process.

2. **ID.; ID.; ID.; PROCEDURE; RULE THAT IF RESPONDENT CANNOT BE SUBPOENAED, THE PROSECUTOR SHALL RESOLVE THE COMPLAINT BASED ON THE EVIDENCE PRESENTED BY THE COMPLAINT; ELUCIDATED.—** Section 3(d), Rule 112 of the Rules of Court, allows Prosecutor Vivero to resolve the complaint based on the evidence before him if a respondent could not be subpoenaed. As long as efforts to reach a respondent were made, and he was given an opportunity

to present countervailing evidence, the preliminary investigation remains valid. The rule was put in place in order to foil underhanded attempts of a respondent to delay the prosecution of offenses. In this case, the Resolution stated that efforts were undertaken to serve subpoenas on the named respondents at their last known addresses. This is sufficient for due process. It was only because a majority of them could no longer be found at their last known addresses that they were not served copies of the complaint and the attached documents or evidence.

3. **ID.; ID.; ID.; DUE PROCESS NOT DENIED WHEN PETITIONER HAS THE OPPORTUNITY TO FILE A COUNTER-AFFIDAVIT BUT FAILED TO DO SO.—** We have previously cautioned that "litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case." Having opted to remain passive during the preliminary investigation, petitioner Ladlad and his counsel cannot now claim a denial of due process, since their failure to file a counter-affidavit was of their own doing.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RULE ON ISSUANCE OF WARRANTS OF ARREST; PROBABLE CAUSE; ELUCIDATED.—** Article III, Section 2 of the Constitution provides that "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce." Probable cause for the issuance of a warrant of arrest has been defined as "such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested." Although the Constitution provides that probable cause shall be determined by the judge after an examination under oath or an affirmation of the complainant and the witnesses, we have ruled that a hearing is not necessary for the determination thereof. In fact, the judge's personal examination of the complainant and the witnesses is not mandatory and indispensable for determining the aptness of issuing a warrant of arrest. It is enough that the judge personally evaluates the prosecutor's report and supporting documents showing the existence of probable cause for the indictment and, on the basis thereof, issue a warrant of arrest; or if, on the

basis of his evaluation, he finds no probable cause, to disregard the prosecutor's resolution and require the submission of additional affidavits of witnesses to aid him in determining its existence.

5. ID.; ID.; ID.; ID.; DETERMINATION OF PROBABLE CAUSE FOR THE ISSUANCE OF WARRANT OF ARREST IS ADDRESSED TO THE SOUND DISCRETION OF THE TRIAL JUDGE.— The determination of probable cause for the issuance of warrants of arrest against petitioners is addressed to the sound discretion of Judge Abando as the trial judge. Further elucidating on the wide latitude given to trial judges in the issuance of warrants of arrest, this Court stated in *Sarigumba v. Sandiganbayan* as follows: x x x The trial court's exercise of its judicial discretion should not, as a general rule, be interfered with in the absence of grave abuse of discretion. Indeed, *certiorari* will not lie to cure errors in the trial court's appreciation of the evidence of the parties, the conclusion of facts it reached based on the said findings, as well as the conclusions of law. x x x. Whether or not there is probable cause for the issuance of warrants for the arrest of the accused is a question of fact based on the allegations in the Informations, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the Information.

6. ID.; POLITICAL OFFENSE DOCTRINE.— Under the political offense doctrine, "common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty."

7. ID.; ID.; POLITICAL OFFENSE (REBELLION) AS DEFENSE IN THE CHARGE OF MULTIPLE MURDER; MUST BE SUFFICIENTLY ESTABLISHED DURING THE TRIAL; REMEDY IN CASE THEREOF.— Any ordinary act assumes a different nature by being absorbed in the crime of rebellion. Thus, when a killing is committed in furtherance of rebellion, the killing is not homicide or murder. Rather, the killing assumes the political complexion of rebellion as its mere ingredient and must be prosecuted and punished as rebellion alone. However, this is not to say that public prosecutors are obliged to

consistently charge respondents with simple rebellion instead of common crimes. No one disputes the well-entrenched principle in criminal procedure that the institution of criminal charges, including whom and what to charge, is addressed to the sound discretion of the public prosecutor. But when the political offense doctrine is asserted as a defense in the trial court, it becomes crucial for the court to determine whether the act of killing was done in furtherance of a political end, and for the political motive of the act to be conclusively demonstrated. Petitioners aver that the records show that the alleged murders were committed in furtherance of the CPP/NPA/NDFP rebellion, and that the political motivation behind the alleged murders can be clearly seen from the charge against the alleged top leaders of the CPP/NPA/NDFP as co-conspirators. We had already ruled that the burden of demonstrating political motivation must be discharged by the defense, since motive is a state of mind which only the accused knows. The proof showing political motivation is adduced during trial where the accused is assured an opportunity to present evidence supporting his defense. It is not for this Court to determine this factual matter in the instant petitions. As held in the case of *Office of the Provincial Prosecutor of Zamboanga Del Norte v. CA*, if during trial, petitioners are able to show that the alleged murders were indeed committed in furtherance of rebellion, Section 14, Rule 110 of the Rules of Court provides the remedy. x x x Thus, if it is shown that the proper charge against petitioners should have been simple rebellion, the trial court shall dismiss the murder charges upon the filing of the Information for simple rebellion, as long as petitioners would not be placed in double jeopardy.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; APPLICATION; WHEN FIRST JEOPARDY ATTACHED.— [Under Sec. 7, Rule 117 of the Rules of Court,] double jeopardy only applies when: (1) a first jeopardy attached; (2) it has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only after the accused has been acquitted or convicted, or the case has been dismissed or otherwise terminated without his express consent, by a competent court in a valid indictment for which the accused has entered a valid plea during arraignment.

LEONEN, *J., concurring opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; PRAYER TO VOID INFORMATIONS AND WARRANTS ISSUED FOR THE CRIME OF MULTIPLE MURDER AS SAID CRIMES ARE DEEMED ABSORBED IN THE PENDING CHARGE OF REBELLION UNDER THE POLITICAL OFFENSE DOCTRINE; REMAND OF THE CASE TO TRIAL COURT PROPER TO EXAMINE EVIDENCE RELATIVE THERETO.— For our decision are consolidated petitions for *certiorari* and prohibition that pray for the declaration of several Informations and Warrants of Arrests as void. The Informations and Warrants were issued for the crime of multiple murder. Petitioners assert that they have a pending criminal charge of rebellion and that the acts raised in their petitions should be dismissed because they are deemed to be affected by the political offense doctrine. The political offense doctrine states that certain crimes, such as murder, are already absorbed by the charge of rebellion when committed as a necessary means and in connection with or in furtherance of rebellion. I agree that this case should be remanded because there has been no evidence yet to prove that the acts imputed to the petitioners actually happened or are attributable to them. Judicial economy, however, requires that we state that there are certain acts which have been committed on the occasion of a rebellion which should no longer be absorbed in that crime. Acts committed in violation of Republic Act No. 9851, even in the context of armed conflicts of a non-international character and in view of the declarations of the Communist Party of the Philippines and the National Democratic Front, cannot be deemed to be acts in connection with or in furtherance of rebellion. x x x It is not our intention to wipe out the history of and the policy behind the political offense doctrine. What this separate opinion seeks to accomplish is to qualify the conditions for the application of the doctrine and remove any blanket application whenever political objectives are alleged. The remnants of armed conflict continue. Sooner or later, with a victor that emerges or even with the success of peace negotiations with insurgent groups, some form of transitional justice may need to reckon with different types of crimes committed on the occasion of these armed uprisings. Certainly, crimes that run afoul the basic

human dignity of persons must not be tolerated. This is in line with the recent developments in national and international law.

2. ID.; ID.; ID.; ID.; PERSONS COMMITTING CRIMES AGAINST HUMANITY MUST NOT BE ALLOWED TO HIDE BEHIND THE POLITICAL OFFENSE DOCTRINE; TORTURE AND SUMMARY EXECUTION AS PART OF REBELLION ARE ABHORRED.— Concomitantly, persons committing crimes against humanity or serious violations of international humanitarian law, international human rights laws, and Rep. Act No. 9851 must not be allowed to hide behind a doctrine crafted to recognize the different nature of armed uprisings as a result of political dissent. The contemporary view is that these can never be considered as acts in furtherance of armed conflict no matter what the motive. Incidentally, this is the view also apparently shared by the CPP/NPA/NDF and major insurgent groups that are part of the present government's peace process. We, therefore, should nuance our interpretation of what will constitute rebellion. The rebel, in his or her effort to assert a better view of humanity, cannot negate himself or herself. Torture and summary execution of enemies or allies are never acts of courage. They demean those who sacrificed and those who gave their lives so that others may live justly and enjoy the blessings of more meaningful freedoms. Torture and summary execution — in any context — are shameful, naked brutal acts of those who may have simply been transformed into desperate cowards. Those who may have suffered or may have died because of these acts deserve better than to be told that they did so in the hands of a rebel.

APPEARANCES OF COUNSEL

Francisco Law Office for V.P. Ladlad.

Public Interest Law Center for petitioners in G.R. Nos. 176830, 185636 & 185587.

The Solicitor General for respondents.

D E C I S I O N

SERENO, *C.J.*:

On 26 August 2006, a mass grave was discovered by elements of the 43rd Infantry Brigade of the Philippine Army at *Sitio* Sapang Daco, *Barangay* Kaulisihan, Inopacan, Leyte.[1] The mass grave contained skeletal remains of individuals believed to be victims of "Operation Venereal Disease" (Operation VD) launched by members of the Communist Party of the Philippines/ New People's Army/National Democratic Front of the Philippines (CPP/NPA/NDFP) to purge their ranks of suspected military informers.

While the doctrine of hierarchy of courts normally precludes a direct invocation of this Court's jurisdiction, we take cognizance of these petitions considering that petitioners have chosen to take recourse directly before us and that the cases are of significant national interest.

Petitioners have raised several issues, but most are too insubstantial to require consideration. Accordingly, in the exercise of sound judicial discretion and economy, this Court will pass primarily upon the following:

1. Whether petitioners were denied due process during preliminary investigation and in the issuance of the warrants of arrest.

2. Whether the murder charges against petitioners should be dismissed under the political offense doctrine.

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[1] Also allegedly found from 2009 to 2012 were more mass grave sites in Gubat, Sorsogon; Camalig, Albay; and Labo, Camarines Norte – all in the Bicol Region [http://www.interaksyon.com/article/38278/photos—bones-in-npa-mass-grave-dont-easily-surrender-names-of-victims (Last accessed on 13 January 2014)].

On 21 July 2012, a mass grave was found in San Francisco, Quezon [http://newsinfo.inquirer.net/233887/remains-found-in-quezon-mass-grave-include-a-pregnant-rebel-army-exec (Last accessed on 13 January 2014)].

Antecedent Facts

These are petitions for *certiorari* and prohibition[2] seeking the annulment of the orders and resolutions of public respondents with regard to the indictment and issuance of warrants of arrest against petitioners for the crime of multiple murder.

Police Chief Inspector George L. Almaden (P C/Insp. Almaden) of the Philippine National Police (PNP) Regional Office 8 and Staff Judge Advocate Captain Allan Tiu (Army Captain Tiu) of the 8th Infantry Division of the Philippine Army sent 12 undated letters to the Provincial Prosecutor of Leyte through Assistant Provincial Prosecutor Rosulo U. Vivero (Prosecutor Vivero).[3] The letters requested appropriate legal action on 12 complaint-affidavits attached therewith accusing 71 named members of the Communist Party of the Philippines/ New People's Army/National Democratic Front of the Philippines (CPP/NPA/NDFP) of murder, including petitioners herein along with several other unnamed members.

The letters narrated that on 26 August 2006, elements of the 43rd Infantry Brigade of the Philippine Army discovered a mass grave site of the CPP/NPA/NDFP at *Sitio* Sapang Daco, *Barangay* Kaulisihan, Inopacan, Leyte.[4] Recovered from the grave site were 67 severely deteriorated skeletal remains believed to be victims of Operation VD.[5]

The PNP Scene of the Crime Operation (SOCO) Team based in Regional Office 8 was immediately dispatched to the mass grave site to conduct crime investigation, and to collect, preserve and analyze the skeletal remains.[6] Also, from 11-17 September 2006, an investigation team composed of intelligence officers, and medico-legal and DNA experts, conducted forensic crime

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[2] Except G.R. No. 190005, which is only a petition for *certiorari*.

[3] *Rollo* (G.R. No. 176830), pp. 135-269.

[4] *Id.* at 139.

[5] *Id.* at 336.

[6] *Id.*

analysis and collected from alleged relatives of the victims DNA samples for matching.[7]

The Initial Specialist Report[8] dated 18 September 2006 issued by the PNP Crime Laboratory in Camp Crame, Quezon City, was inconclusive with regard to the identities of the skeletal remains and even the length of time that they had been buried. The report recommended the conduct of further tests to confirm the identities of the remains and the time window of death.[9]

However, in a Special Report[10] dated 2 October 2006, the Case Secretariat of the Regional and National Inter-Agency Legal Action Group (IALAG) came up with the names of ten (10) possible victims after comparison and examination based on testimonies of relatives and witnesses.[11]

The 12 complaint-affidavits were from relatives of the alleged victims of Operation VD. All of them swore that their relatives had been abducted or last seen with members of the CPP/NPA/NDFP and were never seen again. They also expressed belief that their relatives' remains were among those discovered at the mass grave site.

Also attached to the letters were the affidavits of Zacarias Piedad,[12] Leonardo C. Tanaid, Floro M. Tanaid, Numeriano Beringuel, Glecerio Roluna and Veronica P. Tabara. They narrated that they were former members of the CPP/NPA/NDFP.[13] According to them, Operation VD was ordered in 1985 by the CPP/NPA/NDFP Central Committee.[14] Allegedly,

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[7] *Id.* at 337.

[8] *Id.* at 424-427.

[9] *Id.* at 427.

[10] *Id.* at 336-338.

[11] *Id.* at 337-338.

[12] With Supplemental Affidavit dated 12 January 2007; *id.* at 276-278.

[13] *Id.* at 273, 287, 296, 309, 318 and 329.

[14] *Id.* at 289.

petitioners Saturnino C. Ocampo (Ocampo),[15] Randall B. Echanis (Echanis),[16] Rafael G. Baylosis (Baylosis),[17] and Vicente P. Ladlad (Ladlad)[18] were then members of the Central Committee.

According to these former members, four sub-groups were formed to implement Operation VD, namely, (1) the Intel Group responsible for gathering information on suspected military spies and civilians who would not support the movement; (2) the Arresting Group charged with their arrests; (3) the Investigation Group which would subject those arrested to questioning; and (4) the Execution Group or the "cleaners" of those confirmed to be military spies and civilians who would not support the movement.[19]

From 1985 to 1992, at least 100 people had been abducted, hog-tied, tortured and executed by members of the CPP/NPA/NDFP[20] pursuant to Operation VD.[21]

On the basis of the 12 letters and their attachments, Prosecutor Vivero issued a subpoena requiring, among others, petitioners to submit their counter-affidavits and those of their witnesses.[22] Petitioner Ocampo submitted his counter-affidavit.[23] Petitioners Echanis[24] and Baylosis[25] did not file counter-affidavits because they were allegedly not served the copy of the complaint and the attached documents or evidence. Counsel of petitioner Ladlad

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[15] *Id.* at 288, 310, 319 and 329.

[16] *Id.* at 319.

[17] *Id.* at 310, 319 and 329.

[18] *Id.* at 310 and 319.

[19] *Id.* at 289-290.

[20] *Id.* at 89.

[21] *Id.* at 291.

[22] *Id.* at 91.

[23] *Id.*

[24] *Rollo* (G.R. No. 185587), p. 10.

[25] *Rollo* (G.R. No. 185636), p. 14.

made a formal entry of appearance on 8 December 2006 during the preliminary investigation.[26] However, petitioner Ladlad did not file a counter-affidavit because he was allegedly not served a subpoena.[27]

In a Resolution[28] dated 16 February 2007, Prosecutor Vivero recommended the filing of an Information for 15 counts of multiple murder against 54 named members of the CPP/NPA/NDFP, including petitioners herein, for the death of the following: 1) Juanita Aviola, 2) Concepcion Aragon, 3) Gregorio Eras, 4) Teodoro Recones, Jr., 5) Restituto Ejoc, 6) Rolando Vasquez, 7) Junior Milyapis, 8) Crispin Dalmacio, 9) Zacarias Casil, 10) Pablo Daniel, 11) Romeo Tayabas, 12) Domingo Napoles, 13) Ciriaco Daniel, 14) Crispin Prado, and 15) Ereberto Prado.[29]

Prosecutor Vivero also recommended that Zacarias Piedad, Leonardo Tanaid, Numeriano Beringuel and Glecerio Roluna be dropped as respondents and utilized as state witnesses, as their testimonies were vital to the success of the prosecution.[30] The Resolution was silent with regard to Veronica Tabara.

The Information was filed before the Regional Trial Court (RTC) Hilongos, Leyte, Branch 18 (RTC Hilongos, Leyte) presided by Judge Ephrem S. Abando (Judge Abando) on 28 February 2007, and docketed as Criminal Case No. H-1581.[31] Petitioner Ocampo filed an *Ex Parte* Motion to Set Case for Clarificatory Hearing dated 5 March 2007 prior to receiving a copy of the Resolution recommending the filing of the Information.[32]

On 6 March 2007, Judge Abando issued an Order finding probable cause "in the commission by all mentioned accused

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[26] *Rollo* (G.R. No. 190005), p. 51.

[27] *Id.* at 52.

[28] *Rollo* (G.R. No. 176830), pp. 88-94.

[29] *Id.* at 93.

[30] *Id.*

[31] *Id.* at 84-87.

[32] *Id.* at 96-99. Petitioner Ocampo received a copy of the Resolution on 12 March 2007.

of the crime charged."[33] He ordered the issuance of warrants of arrest against them with no recommended bail for their temporary liberty.[34]

On 16 March 2007, petitioner Ocampo filed before us this special civil action for certiorari and prohibition under Rule 65 of the Rules of Court and docketed as G.R. No. 176830 seeking the annulment of the 6 March 2007 Order of Judge Abando and the 16 February 2007 Resolution of Prosecutor Vivero.[35] The petition prayed for the unconditional release of petitioner Ocampo from PNP custody, as well as the issuance of a temporary restraining order/ writ of preliminary injunction to restrain the conduct of further proceedings during the pendency of the petition.[36]

Petitioner Ocampo argued that a case for rebellion against him and 44 others (including petitioners Echanis and Baylosis[37] and Ladlad[38]) docketed as Criminal Case No. 06-944 was then pending before the RTC Makati, Branch 150 (RTC Makati).[39] Putting forward the political offense doctrine, petitioner Ocampo argues that common crimes, such as murder in this case, are already absorbed by the crime of rebellion when committed as a necessary means, in connection with and in furtherance of rebellion.[40]

We required[41] the Office of the Solicitor General (OSG) to comment on the petition and the prayer for the issuance of a

[33] *Id.* at 82.

[34] *Id.*

[35] *Id.* at 3-81.

[36] *Id.* at 77.

[37] *Rollo* (G.R. No. 185587), p. 451.

[38] *Rollo* (G.R. No. 190005), p. 75.

[39] *Rollo* (G.R. No. 176830), p. 59. On 1 June 2007, the Supreme Court granted the petitions in *Ladlad v. Velasco* – G.R. Nos. 172070-72, 172074-76 and 175013 – in which the RTC of Makati, Branch 150, was ordered to dismiss Criminal Case Nos. 06-452 and 06-944.

[40] *Id.* at 62.

[41] *Id.* at 515-A – 515-B.

temporary restraining order/ writ of preliminary injunction, and set[42] the case for oral arguments on 30 March 2007. The OSG filed its Comment on 27 March 2007.[43]

The following were the legal issues discussed by the parties during the oral arguments:

1. Whether the present petition for *certiorari* and prohibition is the proper remedy of petitioner Ocampo;
2. Assuming it is the proper remedy, whether he was denied due process during preliminary investigation and in the issuance of the warrant of arrest;
3. Whether the murder charges against him are already included in the rebellion charge against him in the RTC.[44]

Afterwards, the parties were ordered to submit their memoranda within 10 days.[45] On 3 April 2007, the Court ordered the provisional release of petitioner Ocampo under a ₱100,000 cash bond.[46]

Acting on the observation of the Court during the oral arguments that the single Information filed before the RTC Hilongos, Leyte was defective for charging 15 counts of murder, the prosecution filed a Motion to Admit Amended Information and New Informations on 11 April 2007.[47] In an Order dated 27 July 2007, Judge Abando held in abeyance the resolution thereof and effectively suspended the proceedings during the pendency of G.R. No. 176830 before this Court.[48]

While the proceedings were suspended, petitioner Echanis was arrested on 28 January 2008 by virtue of the warrant of

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[42] *Id.* at 541-542.

[43] *Id.* at 554-A.

[44] *Id.* at 554-C – 554-D.

[45] *Id.* at 554-D.

[46] *Id.* at 557-558.

[47] *Rollo* (G.R. No. 185587), pp. 426-427.

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

arrest issued by Judge Abando on 6 March 2007.[49] On 1 February 2008, petitioners Echanis and Baylosis filed a Motion for Judicial Reinvestigation/ Determination of Probable Cause with Prayer to Dismiss the Case Outright and Alternative Prayer to Recall/ Suspend Service of Warrant.[50]

On 30 April 2008, Judge Abando issued an Order denying the motion.[51] Petitioners Echanis and Baylosis filed a Motion for Reconsideration[52] dated 30 May 2008, but before being able to rule thereon, Judge Abando issued an Order dated 12 June 2008 transmitting the records of Criminal Case No. H-1581 to the Office of the Clerk of Court, RTC Manila.[53] The Order was issued in compliance with the Resolution dated 23 April 2008 of this Court granting the request of then Secretary of Justice Raul Gonzales to transfer the venue of the case.

The case was re-raffled to RTC Manila, Branch 32 (RTC Manila) presided by Judge Thelma Bunyi-Medina (Judge Medina) and re-docketed as Criminal Case No. 08-262163.[54] Petitioner Echanis was transferred to the PNP Custodial Center in Camp Crame, Quezon City. On 12 August 2008, petitioners Echanis and Baylosis filed their Supplemental Arguments to Motion for Reconsideration.[55]

In an Order[56] dated 27 October 2008, Judge Medina suspended the proceedings of the case pending the resolution of G.R. No. 176830 by this Court.

On 18 December 2008, petitioner Ladlad filed with the RTC Manila a Motion to Quash and/or Dismiss.[57]

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[49] *Id.* at 18.

[50] *Id.* at 430-460.

[51] *Id.* at 69-73.

[52] *Id.* at 461-485.

[53] *Id.* at 486.

[54] *Id.* at 19.

[55] *Id.* at 487-519.

[56] *Id.* at 64-68.

[57] *Rollo* (G.R. No. 190005), pp. 162-218.

On 23 December 2008, petitioner Echanis filed before us a special civil action for *certiorari* and prohibition under Rule 65 of the Rules of Court seeking the annulment of the 30 April 2008 Order of Judge Abando and the 27 October 2008 Order of Judge Medina.[58] The petition, docketed as G.R. No. 185587, prayed for the unconditional and immediate release of petitioner Echanis, as well as the issuance of a temporary restraining order/ writ of preliminary injunction to restrain his further incarceration.[59]

On 5 January 2009, petitioner Baylosis filed before us a special civil action for *certiorari* and prohibition under Rule 65 of the Rules of Court also seeking the annulment of the 30 April 2008 Order of Judge Abando and the 27 October 2008 Order of Judge Medina.[60] The petition, docketed as G.R. No. 185636, prayed for the issuance of a temporary restraining order/ writ of preliminary injunction to restrain the implementation of the warrant of arrest against petitioner Baylosis.[61]

The Court consolidated G.R. Nos. 185587 and 185636 on 12 January 2009.[62]

On 3 March 2009, the Court ordered the further consolidation of these two cases with G.R. No. 176830.[63] We required[64] the OSG to comment on the prayer for petitioner Echanis's immediate release, to which the OSG did not interpose any objection on these conditions: that the temporary release shall only be for the purpose of his attendance and participation in the formal peace negotiations between the Government of the Republic of the Philippines (GRP) and the CPP/NPA/NDFP, set to begin in August 2009; and that his temporary release

[58] *Rollo*, (G.R. No. 185587), pp. 3-63.

[59] *Id.* at 56.

[60] *Rollo* (G.R. No. 185636), pp. 7-71.

[61] *Id.* at 64.

[62] *Id.* at 564.

[63] *Rollo* (G.R. No. 185587), p. 587.

[64] *Id.* at 606-607.

shall not exceed six (6) months.[65] The latter condition was later modified, such that his temporary liberty shall continue for the duration of his actual participation in the peace negotiations.[66]

On 11 August 2009, the Court ordered the provisional release of petitioner Echanis under a 100,000 cash bond, for the purpose of his participation in the formal peace negotiations.[67]

Meanwhile, the Department of Justice (DOJ) filed its Opposition[68] to petitioner Ladlad's motion to quash before the RTC Manila. The trial court conducted a hearing on the motion on 13 February 2009.[69]

On 6 May 2009, Judge Medina issued an Order[70] denying the motion to quash. The motion for reconsideration filed by petitioner Ladlad was also denied on 27 August 2009.[71]

On 9 November 2009, petitioner Ladlad filed before us a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking the annulment of the 6 May 2009 and 27 August 2009 Orders of Judge Medina.[72] The petition was docketed as G.R. No. 190005.

On 11 January 2010, we ordered the consolidation of G.R. No. 190005 with G.R. Nos. 176830, 185587 and 185636.[73] We also required the OSG to file its comment thereon. The OSG submitted its Comment[74] on 7 May 2010.

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[65] *Rollo* (G.R. No. 176830), pp. 736-740.

[66] *Id.* at 1029-1032.

[67] *Id.* at 742-743.

[68] *Rollo* (G.R. No. 190005), pp. 331-340.

[69] *Id.* at 347-348.

[70] *Id.* at 108-111.

[71] *Id.* at 112.

[72] *Id.* at 3-107.

[73] *Id.* at 860-861.

[74] *Id.* at 879-922.

On 27 July 2010, we likewise required the OSG to file its Comment in G.R. Nos. 185636 and 185587.[75] These Comments were filed by the OSG on 13 December 2010[76] and on 21 January 2011,[77] respectively. Petitioners Echanis and Baylosis filed their Consolidated Reply[78] on 7 June 2011.

On 2 May 2011, petitioner Ladlad filed an Urgent Motion to Fix Bail.[79] On 21 July 2011, petitioner Baylosis filed A Motion to Allow Petitioner to Post Bail.[80] The OSG interposed no objection to the grant of a ₱100,000 cash bail to them considering that they were consultants of the NDFP negotiating team, which was then holding negotiations with the GRP peace panel for the signing of a peace accord.[81]

On 17 January 2012, we granted the motions of petitioners Ladlad and Baylosis and fixed their bail in the amount of ₱100,000, subject to the condition that their temporary release shall be limited to the period of their actual participation in the peace negotiations.[82]

Petitioner Ladlad filed his Reply[83] to the OSG Comment on 18 January 2013.

OUR RULING

Petitioners were accorded due process during preliminary investigation and in the issuance of the warrants of arrest.

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[75] *Id.* at 932-933.

[76] *Id.* at 940-1003.

[77] *Rollo* (G.R. No. 185587), pp. 807-851.

[78] *Rollo* (G.R. No. 185636), pp. 1363-1391.

[79] *Rollo* (G.R. No. 190005), pp. 1006-1024.

[80] *Rollo* (G.R. No. 185636), pp. 1399-1402.

[81] *Rollo* (G.R. No. 190005), p. 1046; *rollo* (G.R. No. 185636), p. 1419.

[82] *Rollo* (G.R. No. 190005), pp. 1050-1053.

[83] *Id.* at 1073-1116.

A. Preliminary Investigation

A preliminary investigation is "not a casual affair."[84] It is conducted to protect the innocent from the embarrassment, expense and anxiety of a public trial.[85] While the right to have a preliminary investigation before trial is statutory rather than constitutional, it is a substantive right and a component of due process in the administration of criminal justice.[86]

In the context of a preliminary investigation, the right to due process of law entails the opportunity to be heard.[87] It serves to accord an opportunity for the presentation of the respondent's side with regard to the accusation. Afterwards, the investigating officer shall decide whether the allegations and defenses lead to a reasonable belief that a crime has been committed, and that it was the respondent who committed it. Otherwise, the investigating officer is bound to dismiss the complaint.

"The essence of due process is reasonable opportunity to be heard and submit evidence in support of one's defense."[88] What is proscribed is lack of opportunity to be heard.[89] Thus, one who has been afforded a chance to present one's own side of the story cannot claim denial of due process.[90]

Petitioners Echanis and Baylosis allege that they did not receive a copy of the complaint and the attached documents or evidence.[91] Petitioner Ladlad claims that he was not served a

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[84] *Ang-Abaya v. Ang*, G.R. No. 178511, 4 December 2008, 573 SCRA 129, 146.

[85] *Uy v. Office of the Ombudsman*, G.R. Nos. 156399-400, 27 June 2008, 556 SCRA 73, 93.

[86] *Id.*

[87] *Santos v. People*, G.R. No. 173176, 26 August 2008, 563 SCRA 341, 369.

[88] *Kuizon v. Desierto*, 406 Phil. 611, 630 (2001).

[89] *Id.*

[90] *Pascual v. People*, 547 Phil. 620, 627 (2007).

[91] *Rollo* (G.R. No. 185587), p. 31; *rollo* (G.R. No. 185636), p. 41.

subpoena due to the false address indicated in the 12 undated letters of P C/Insp. Almaden and Army Captain Tiu to Prosecutor Vivero.[92] Furthermore, even though his counsels filed their formal entry of appearance before the Office of the Prosecutor, petitioner Ladlad was still not sent a subpoena through his counsels' addresses.[93] Thus, they were deprived of the right to file counter-affidavits.

Petitioner Ocampo claims that Prosecutor Vivero, in collusion with P C/Insp. Almaden and Army Captain Tiu, surreptitiously inserted the Supplemental Affidavit of Zacarias Piedad in the records of the case without furnishing petitioner Ocampo a copy.[94] The original affidavit of Zacarias Piedad dated 14 September 2006 stated that a meeting presided by petitioner Ocampo was held in 1984, when the launching of Operation VD was agreed upon.[95] Petitioner Ocampo refuted this claim in his Counter-affidavit dated 22 December 2006 stating that he was in military custody from October 1976 until his escape in May 1985.[96] Thereafter, the Supplemental Affidavit of Zacarias Piedad dated 12 January 2007 admitted that he made a mistake in his original affidavit, and that the meeting actually took place in June 1985.[97] Petitioner Ocampo argues that he was denied the opportunity to reply to the Supplemental Affidavit by not being furnished a copy thereof.

Petitioner Ocampo also claims that he was denied the right to file a motion for reconsideration or to appeal the Resolution of Prosecutor Vivero, because the latter deliberately delayed the service of the Resolution by 19 days, effectively denying petitioner Ocampo his right to due process.[98]

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[92] *Rollo* (G.R. No. 190005), pp. 49-50.

[93] *Id.* at 51-52.

[94] *Rollo* (G.R. No. 176830), pp. 75-76.

[95] *Id.* at 288-289.

[96] *Id.* at 45-46.

[97] *Id.* at 277.

[98] *Id.* at 74-75.

As to the claim of petitioners Echanis and Baylosis, we quote the pertinent portion of Prosecutor Vivero's Resolution, which states:

> In connection with the foregoing and pursuant to the Revised Rules of Criminal Procedure[,] the respondents were issued and served with Subpoena at their last known address for them to submit their counter-affidavits and that of their witnesses.
>
> Majority of the respondents did not submit their counter-affidavits because they could no longer be found in their last known address, per return of the subpoenas. On the other hand, Saturnino Ocampo @ Satur, Fides Lim, Maureen Palejaro and Ruben Manatad submitted their Counter-Affidavits. However, Vicente Ladlad and Jasmin Jerusalem failed to submit the required Counter Affidavits in spite entry of appearance by their respective counsels.[99]

Section 3(d), Rule 112 of the Rules of Court, allows Prosecutor Vivero to resolve the complaint based on the evidence before him if a respondent could not be subpoenaed. As long as efforts to reach a respondent were made, and he was given an opportunity to present countervailing evidence, the preliminary investigation remains valid.[100] The rule was put in place in order to foil underhanded attempts of a respondent to delay the prosecution of offenses.[101]

In this case, the Resolution stated that efforts were undertaken to serve subpoenas on the named respondents at their last known addresses. This is sufficient for due process. It was only because a majority of them could no longer be found at their last known addresses that they were not served copies of the complaint and the attached documents or evidence.

Petitioner Ladlad claims that his subpoena was sent to the nonexistent address "53 Sct. Rallos St., QC,"[102] which had

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[99] *Id.* at 91.

[100] *Rodis, Sr. v. Sandiganbayan*, 248 Phil. 854, 859 (1988).

[101] *Id.*

[102] *Rollo* (G.R. No. 176830), p. 136.

never been his address at any time.[103] In connection with this claim, we take note of the fact that the subpoena to Fides Lim, petitioner Ladlad's wife,[104] was sent to the same address, and that she was among those mentioned in the Resolution as having timely submitted their counter-affidavits.

Despite supposedly never receiving a subpoena, petitioner Ladlad's counsel filed a formal entry of appearance on 8 December 2006.[105] Prosecutor Vivero had a reason to believe that petitioner Ladlad had received the subpoena and accordingly instructed his counsel to prepare his defense.

Petitioner Ladlad, through his counsel, had every opportunity to secure copies of the complaint after his counsel's formal entry of appearance and, thereafter, to participate fully in the preliminary investigation. Instead, he refused to participate.

We have previously cautioned that "litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case."[106] Having opted to remain passive during the preliminary investigation, petitioner Ladlad and his counsel cannot now claim a denial of due process, since their failure to file a counter-affidavit was of their own doing.

Neither do we find any merit in petitioner Ocampo's allegation of collusion to surreptitiously insert the Supplemental Affidavit of Zacarias Piedad in the records. There was nothing surreptitious about the Supplemental Affidavit since it clearly alludes to an earlier affidavit and admits the mistake committed regarding the date of the alleged meeting. The date of the execution of the Supplemental Affidavit was also clearly stated. Thus, it was clear that it was executed after petitioner Ocampo had submitted his counter-affidavit. Should the case go to trial, that

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[103] *Rollo* (G.R. No. 190005), p. 51.

[104] *Id.* at 11.

[105] *Id.* at 51.

[106] *Balgami v. CA*, 487 Phil. 102, 115 (2004), citing *Salonga v. CA*, 336 Phil. 514 (1997).

will provide petitioner Ocampo with the opportunity to question the execution of Zacarias Piedad's Supplemental Affidavit.

Neither can we uphold petitioner Ocampo's contention that he was denied the right to be heard. For him to claim that he was denied due process by not being furnished a copy of the Supplemental Affidavit of Zacarias Piedad would imply that the entire case of the prosecution rested on the Supplemental Affidavit. The OSG has asserted that the indictment of petitioner Ocampo was based on the collective affidavits of several other witnesses[107] attesting to the allegation that he was a member of the CPP/NPA/NDFP Central Committee, which had ordered the launch of Operation VD.

As to his claim that he was denied the right to file a motion for reconsideration or to appeal the Resolution of Prosecutor Vivero due to the 19-day delay in the service of the Resolution, it must be pointed out that the period for filing a motion for reconsideration or an appeal to the Secretary of Justice is reckoned from the date of receipt of the resolution of the prosecutor, not from the date of the resolution. This is clear from Section 3 of the 2000 National Prosecution Service Rule on Appeal:

> Sec. 3. Period to appeal. – The **appeal** shall be taken within **fifteen (15) days from receipt of the resolution**, or of the denial of the **motion for reconsideration/ reinvestigation** if one has been filed within **fifteen (15) days from receipt of the assailed resolution**. Only one motion for reconsideration shall be allowed. (Emphasis supplied)

Thus, when petitioner Ocampo received the Resolution of Prosecutor Vivero on 12 March 2007,[108] the former had until 27 March 2007 within which to file either a motion for reconsideration before the latter or an appeal before the Secretary of Justice. Instead, petitioner Ocampo chose to file the instant petition for *certiorari* directly before this Court on 16 March 2007.

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[107] *Rollo* (G.R. No. 176830), p. 587.

[108] *Id.* at 74.

B. Issuance of the Warrants of Arrest

Article III, Section 2 of the Constitution provides that "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce."

Petitioner Ocampo alleges that Judge Abando did not comply with the requirements of the Constitution in finding the existence of probable cause for the issuance of warrants of arrest against petitioners.[109]

Probable cause for the issuance of a warrant of arrest has been defined as "such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested."[110] Although the Constitution provides that probable cause shall be determined by the judge after an examination under oath or an affirmation of the complainant and the witnesses, we have ruled that a hearing is not necessary for the determination thereof.[111] In fact, the judge's personal examination of the complainant and the witnesses is not mandatory and indispensable for determining the aptness of issuing a warrant of arrest.[112]

It is enough that the judge personally evaluates the prosecutor's report and supporting documents showing the existence of probable cause for the indictment and, on the basis thereof, issue a warrant of arrest; or if, on the basis of his evaluation, he finds no probable cause, to disregard the prosecutor's resolution and require the submission of additional affidavits of witnesses to aid him in determining its existence.[113]

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[109] *Id.* at 21.

[110] *Allado v. Diokno*, G.R. No. 113630, 5 May 1994, 232 SCRA 192, 199-200.

[111] *De los Santos-Reyes v. Montesa, Jr.*, 317 Phil. 101, 111 (1995).

[112] *People v. Grey*, G.R. No. 180109, 26 July 2010, 625 SCRA 523, 536.

[113] *Supra* note 111.

Petitioners Echanis and Baylosis claim that, had Judge Abando painstakingly examined the records submitted by Prosecutor Vivero, the judge would have inevitably dismissed the charge against them.[114] Additionally, petitioner Ocampo alleges that Judge Abando did not point out facts and evidence in the record that were used as bases for his finding of probable cause to issue a warrant of arrest.[115]

The determination of probable cause for the issuance of warrants of arrest against petitioners is addressed to the sound discretion of Judge Abando as the trial judge.[116] Further elucidating on the wide latitude given to trial judges in the issuance of warrants of arrest, this Court stated in *Sarigumba v. Sandiganbayan*[117] as follows:

> x x x. The trial court's exercise of its judicial discretion should not, as a general rule, be interfered with in the absence of grave abuse of discretion. Indeed, *certiorari* will not lie to cure errors in the trial court's appreciation of the evidence of the parties, the conclusion of facts it reached based on the said findings, as well as the conclusions of law. x x x.
>
> Whether or not there is probable cause for the issuance of warrants for the arrest of the accused is a question of fact based on the allegations in the Informations, the Resolution of the Investigating Prosecutor, including other documents and/or evidence appended to the Information.

Here, the allegations of petitioners point to factual matters indicated in the affidavits of the complainants and witnesses as bases for the contention that there was no probable cause for petitioners' indictment for multiple murder or for the issuance of warrants for their arrest. As stated above, the trial judge's appreciation of the evidence and conclusion of facts based thereon are not interfered with in the absence of grave abuse of

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114 *Rollo* (G.R. No. 185587), p. 27; *rollo* (G.R. No. 185636), p. 34.

115 *Rollo* (G.R. No. 176830), p. 64.

116 *Sarigumba v. Sandiganbayan*, 491 Phil. 704, 720 (2005).

117 *Id.* at 720-721.

discretion. Again, "he sufficiently complies with the requirement of personal determination if he reviews the [I]nformation and the documents attached thereto, and on the basis thereof forms a belief that the accused is probably guilty of the crime with which he is being charged."[118]

Judge Abando's review of the Information and the supporting documents is shown by the following portion of the judge's 6 March 2007 Order:

> On the evaluation of the Resolution and its Information as submitted and filed by the Provincial Prosecution of Leyte Province supported by the following documents: Affidavits of Complainants, Sworn Statements of Witnesses and other pertinent documents issued by the Regional Crime Laboratory Office, PNP, Region VIII and Camp Crame, Quezon City, pictures of the grave site and skeletal remains, this court has the findings [sic] of probable cause in the commission by all mentioned accused of the crime charged.[119]

At bottom, issues involving the finding of probable cause for an indictment and issuance of a warrant of arrest, as petitioners are doubtless aware, are primarily questions of fact that are normally not within the purview of a petition for *certiorari*,[120] such as the petitions filed in the instant consolidated cases.

The political offense doctrine is not a ground to dismiss the charge against petitioners prior to a determination by the trial court that the murders were committed in furtherance of rebellion.

Under the political offense doctrine, "common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and assume the political

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[118] *Cuevas v. Muñoz*, 401 Phil. 752, 773-774 (2000).

[119] *Rollo* (G.R. No. 176830), p. 82.

[120] *Heirs of Marasigan v. Marasigan*, G.R. No. 156078, 14 March 2008, 548 SCRA 409, 443; *Serapio v. Sandiganbayan (Third Division)*, 444 Phil. 499, 529 (2003); *Reyes v. CA*, 378 Phil. 984, 990 (1999).

complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty."[121]

Any ordinary act assumes a different nature by being absorbed in the crime of rebellion.[122] Thus, when a killing is committed in furtherance of rebellion, the killing is not homicide or murder. Rather, the killing assumes the political complexion of rebellion as its mere ingredient and must be prosecuted and punished as rebellion alone.

However, this is not to say that public prosecutors are obliged to consistently charge respondents with simple rebellion instead of common crimes. No one disputes the well-entrenched principle in criminal procedure that the institution of criminal charges, including whom and what to charge, is addressed to the sound discretion of the public prosecutor.[123]

But when the political offense doctrine is asserted as a defense in the trial court, it becomes crucial for the court to determine whether the act of killing was done in furtherance of a political end, and for the political motive of the act to be conclusively demonstrated.[124]

Petitioners aver that the records show that the alleged murders were committed in furtherance of the CPP/NPA/NDFP rebellion, and that the political motivation behind the alleged murders can be clearly seen from the charge against the alleged top leaders of the CPP/NPA/NDFP as co-conspirators.

We had already ruled that the burden of demonstrating political motivation must be discharged by the defense, since motive is

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[121] *People v. Hernandez*, 99 Phil. 515, 541 (1956).

[122] *People v. Lovedioro*, 320 Phil. 481, 489 (1995).

[123] *Glaxosmithkline Philippines, Inc. v. Malik*, 530 Phil. 662 (2006); *Punzalan v. Dela Peña*, 478 Phil. 771 (2004); *Potot v. People*, 432 Phil. 1028 (2002).

[124] *Supra* note 122.

a state of mind which only the accused knows.[125] The proof showing political motivation is adduced during trial where the accused is assured an opportunity to present evidence supporting his defense. It is not for this Court to determine this factual matter in the instant petitions.

As held in the case of *Office of the Provincial Prosecutor of Zamboanga Del Norte v. CA*,[126] if during trial, petitioners are able to show that the alleged murders were indeed committed in furtherance of rebellion, Section 14, Rule 110 of the Rules of Court provides the remedy, to wit:

> SECTION 14. *Amendment or substitution*. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.
>
> However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (n)
>
> **If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with Section 19, Rule 119, provided the accused shall not be placed in double jeopardy.** The court may require the witnesses to give bail for their appearance at the trial. (Emphasis supplied)

Thus, if it is shown that the proper charge against petitioners should have been simple rebellion, the trial court shall dismiss the murder charges upon the filing of the Information for simple rebellion, as long as petitioners would not be placed in double jeopardy.

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[125] *Id.*

[126] 401 Phil. 945, 961 (2000).

Section 7, Rule 117 of the Rules of Court, states:

SEC. 7. *Former conviction or acquittal; double jeopardy*. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Based on the above provision, double jeopardy only applies when: (1) a first jeopardy attached; (2) it has been validly terminated; and (3) a second jeopardy is for the same offense as in the first.[127]

A first jeopardy attaches only after the accused has been acquitted or convicted, or the case has been dismissed or otherwise terminated without his express consent, by a competent court in a valid indictment for which the accused has entered a valid plea during arraignment.[128]

To recall, on 12 May 2006, an Information for the crime of rebellion, as defined and penalized under Article 134 in relation to Article 135 of the Revised Penal Code, docketed as Criminal Case No. 06-944 was filed before the RTC Makati against petitioners and several others.[129]

However, petitioners were never arraigned in Criminal Case No. 06-944. Even before the indictment for rebellion was filed before the RTC Makati, petitioners Ocampo, Echanis and Ladlad had already filed a petition before this Court to seek the nullification of the Orders of the DOJ denying their motion for

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[127] *Pacoy v. Cajigal*, G.R. No. 157472, 28 September 2007, 534 SCRA 338, 352.

[128] *Id.*

[129] *Rollo* (G.R. No. 176830), pp. 117-128.

the inhibition of the members of the prosecution panel due to lack of impartiality and independence.[130] When the indictment was filed, petitioners Ocampo, Echanis and Ladlad filed supplemental petitions to enjoin the prosecution of Criminal Case No. 06-944.[131] We eventually ordered the dismissal of the rebellion case. It is clear then that a first jeopardy never had a chance to attach.

Petitioner Ocampo shall remain on provisional liberty under the ₱100,000 cash bond posted before the Office of the Clerk of Court. He shall remain on provisional liberty until the termination of the proceedings before the RTC Manila.

The OSG has given its conformity to the provisional liberty of petitioners Echanis, Baylosis and Ladlad in view of the ongoing peace negotiations. Their provisional release from detention under the cash bond of ₱100,000 each shall continue under the condition that their temporary release shall be limited to the period of their actual participation as CPP-NDF consultants in the peace negotiations with the government or until the termination of the proceedings before the RTC Manila, whichever is sooner. It shall be the duty of the government to inform this Court the moment that peace negotiations are concluded.

WHEREFORE, the instant consolidated petitions are **DISMISSED.** The RTC of Manila, Branch 32, is hereby **ORDERED** to proceed with dispatch with the hearing of Criminal Case No. 08-262163. Petitioner Saturnino C. Ocampo shall remain on temporary liberty under the same bail granted by this Court until the termination of the proceedings before the RTC Manila. Petitioners Randall B. Echanis, Rafael G. Baylosis and Vicente P. Ladlad shall remain on temporary liberty under the same bail granted by this Court until their actual participation as CPP-NDF consultants in the peace negotiations with the government are concluded or terminated, or until the

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[130] *Ladlad v. Velasco*, G.R. Nos. 172070-72, 172074-76, 175013, 1 June 2007, 523 SCRA 318, 340.

[131] *Id.*

termination of the proceedings before the RTC Manila, whichever is sooner.

SO ORDERED.

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

Leonen, J., see separate concurring opinion.

CONCURRING OPINION

"Some say freedom is relative. One man's freedom is another man's bondage. We may have been in chains, but we weren't shackled by delusions. Our movements were restrained, but we weren't tied up by myth. Our tormentors thought they were free, but they were blinded by falsehood; their senses were deadened by the mirage of power they clutched and made god. And then they were stunned by their own shadows; paralyzed by fear of the very monsters and demons they fashioned in their heads that stood to devour them at the end of it all.

. . . Our eventual freedom was truly memorable. The process of unchaining was both literal and symbolic, and not without drama and fanfare. We weren't released all at once, but one or two at a time. Ka Ranel and myself were freed at the same time – around December of 1988. 'Free at last!' we declared, grinning from ear to ear. We were guided through some underbrush, after it we came upon a clearing where the rest of the former captives were waiting. We were greeted with applause. Tearful hugs, handshakes, up-heres, singing, merry-making, even role-playing. Rage and retribution will have to wait. The moment was a celebration."

Robert Francis Garcia
"To Suffer Thy Comrades:
How the Revolution Decimated Its Own" 24 (2001)

LEONEN, *J.*:

Dissent affirms the dissenter's belief in how human dignity should be shaped. It assumes difference with the status quo.

It is this assertion that provides depth and dynamism in our democracy.

However, indignities masquerading as dissent or even brought about by misguided assessments of what is pragmatic do not deserve any legal protection. Such acts cease to become political. These are simply inhuman.

Acts which debase humanity even by the most organized and ardent dissenters do not even deserve the label of rebellion.

I concur with the Chief Justice that this case should be remanded so that the court can properly examine the evidence raised by the defense. I write this separate opinion in the interest of judicial economy. Should it be shown that there are acts committed in violation of Republic Act No. 9851, otherwise known as the Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, these acts could not be absorbed in the crime of rebellion.

I

For our decision are consolidated petitions for *certiorari* and prohibition that pray for the declaration of several Informations and Warrants of Arrests as void. The Informations and Warrants were issued for the crime of multiple murder. Petitioners assert that they have a pending criminal charge of rebellion[1] and that the acts raised in their petitions should be dismissed because they are deemed to be affected by the political offense doctrine. The political offense doctrine states that certain crimes, such as murder, are already absorbed by the charge of rebellion when committed as a necessary means and in connection with or in furtherance of rebellion.

I agree that this case should be remanded because there has been no evidence yet to prove that the acts imputed to the

[1] However, *see Ladlad v. Velasco*, G.R. Nos. 172070-72, 172074-76, and 175013, June 1, 2007, 523 SCRA 318, wherein this court granted the petitions and ordered the dismissal of Criminal Case Nos. 06-452 and 06-944 for rebellion.

petitioners actually happened or are attributable to them. Judicial economy, however, requires that we state that there are certain acts which have been committed on the occasion of a rebellion which should no longer be absorbed in that crime.

Acts committed in violation of Republic Act No. 9851, even in the context of armed conflicts of a non-international character and in view of the declarations of the Communist Party of the Philippines and the National Democratic Front, cannot be deemed to be acts in connection with or in furtherance of rebellion.

II

We survey the evolution of the political offense doctrine to provide better context.

As early as 1903, this court distinguished common crimes from crimes committed in furtherance of a political objective. In *United States v. Lardizabal*,[2] the accused, Commanding Officer of Filipino insurgents, ordered the execution of an American prisoner before retreating from the enemy. We said in this case that the accused's act falls under the Amnesty Proclamation of 1902, thus:

> x x x [the execution] was not an isolated act such as a "political offense committed during the insurrection pursuant to orders issued by the civil or military insurrectionary authorities," but was a measure which, whether necessary or not, was inherent in the military operations for the preservation of the troops commanded by him and of which he was the supreme officer on that island. ***It was an act which, while from the standpoint of military law might be regarded as one of cruelty, was at the same time one depending absolutely upon the discretion of an officer in charge of a command for securing the safety of the troops under his control and constitutes no other offense than that of sedition, within which term the war itself is included by the letter and spirit of the proclamation.***[3] (Emphasis provided)

In *United States v. Pacheco*,[4] two men selling English dictionaries within the Dagupan area were abruptly abducted

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[2] 1 Phil. 729 (1903).

[3] *Id.* at 730.

[4] 2 Phil. 345 (1903).

and killed by the accused and his men. Witnesses testified that it was presumed by the accused that the salesmen were American spies because the dictionaries being sold were written in English. This court observed:

> It does not appear from the record that the aggressors were impelled to kill the deceased by any motive other than that the latter were suspected of being spies and, therefore, traitors to the revolutionary party to which the defendants belonged. From the foregoing statement of facts, it may therefore be said **that the two murders prosecuted herein were of a political character** and the result of internal political hatreds between Filipinos, the defendants having been insurgents opposed to the constituted government.
>
> The case has to do with two crimes for which, under the penal law, the severest punishment has always been inflicted. However, considering the circumstances under which these crimes were committed and the fact that the sovereign power in these Islands, in view of the extraordinary and radical disturbance which, during the period following the year 1896, prevailed in and convulsed this country, and **prompted by the dictates of humanity and public policy, has deemed it advisable to blot out even the shadow of a certain class of offenses, decreeing full pardon and amnesty to their authors**—an act of elevated statesmanship and timely generosity, more political than judicial in its nature, intended to mitigate the severity of the law—it is incumbent upon us, in deciding this case, to conform our judgment to the requirements and conditions of the decree so promulgated.[5] (Emphasis provided)

Then in the landmark case of *People v. Hernandez*,[6] this court defined the term, political offense:

> In short, **political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive.** If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the Philippines Islands or any part thereof." then **said offense becomes stripped of its "common"**

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[5] *Id.* at 346-347.

[6] 99 Phil. 515 (1956).

complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.[7] (Emphasis provided)

This court in *Hernandez* first clarified whether common crimes such as murder, arson, and other similar crimes are to be complexed with the main crimes in the Revised Penal Code. Thus:

> x x x national, as well as international, laws and jurisprudence overwhelmingly favor the proposition that ***common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same, to justify the imposition of a graver penalty.***[8] (Emphasis provided)

Article 48 of the Revised Penal Code covering complex crimes provides:

> Art. 48. *Penalty for complex crimes.* — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

The *Hernandez* ruling was then affirmed by this court in subsequent cases, such as *Enrile v. Salazar*.[9] It is worthy to note, however, that in "affirming" the doctrine in *Hernandez,* this court in *Enrile* said:

> It may be that in the light of contemporary events, the act of rebellion has lost that quintessentially quixotic quality that justifies the relative leniency with which it is regarded and punished by law, that present-day rebels are less impelled by love of country than by lust for power and have become no better than mere terrorists to whom nothing, not even the sanctity of human life, is allowed to

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[7] *Id.* at 535-536.

[8] *Id.* at 541.

[9] 264 Phil. 593 (1990) [Per J. Narvasa, *En Banc*].

stand in the way of their ambitions. ***Nothing so underscores this aberration as the rash of seemingly senseless killings, bombings, kidnappings and assorted mayhem so much in the news these days, as often perpetrated against innocent civilians as against the military, but by and large attributable to, or even claimed by so-called rebels to be part of, an ongoing rebellion.***

It is enough to give anyone pause—and the Court is no exception—that not even the crowded streets of our capital City seem safe from such unsettling violence that is disruptive of the public peace and stymies every effort at national economic recovery. ***There is an apparent need to restructure the law on rebellion, either to raise the penalty therefor or to clearly define and delimit the other offenses to be considered as absorbed thereby, so that it cannot be conveniently utilized as the umbrella for every sort of illegal activity undertaken in its name.*** The Court has no power to effect such change, for it can only interpret the law as it stands at any given time, and what is needed lies beyond interpretation. Hopefully, Congress will perceive the need for promptly seizing the initiative in this matter, which is properly within its province.[10] (Emphasis provided)

However, other cases declined to rule that all other crimes charged in the Information are absorbed under alleged political offenses.[11] In *Misolas v. Panga*,[12] this court ruled:

Neither would the doctrines enunciated by the Court in *Hernandez* and *Geronimo*, [sic] and *People v. Rodriguez* [107 Phil. 659] save the day for petitioner.

In *Hernandez*, the accused were charged with the complex crime of rebellion with murder, arson and robbery while in *Geronimo*, the information was for the complex crime of rebellion with murder, robbery and kidnapping. In those two cases[,] the Court held that aforestated common crimes cannot be complexed with rebellion as these crimes constituted the means of committing the crime of rebellion. These common crimes constituted the acts of "engaging in war" and

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[10] *Id.* at 617-618.

[11] See *Office of the Provincial Prosecutor of Zamboanga del Norte v. Court of Appeals*, 401 Phil. 945 (2000).

[12] 260 Phil. 702 (1990) [Per J. Cortes, En Banc].

"committing serious violence" which are essential elements of the crime of rebellion [*See* Arts. 134-135, Revised Penal Code] and, hence, are deemed absorbed in the crime of rebellion. Consequently, the accused can be held liable only for the single crime of rebellion.

On the other hand, in *Rodriguez*, the Court ruled that since the accused had already been charged with rebellion, he can no longer be charged for illegal possession of firearms for the same act of unauthorized possession of firearm on which the charge of rebellion was based, as said act constituted the very means for the commission of rebellion. Thus, the illegal possession of the firearm was deemed absorbed in the crime of rebellion.

However, in the present case, petitioner is being charged specifically for the qualified offense of illegal possession of firearms and ammunition under P.D. 1866. HE IS NOT BEING CHARGED WITH THE COMPLEX CRIME OF SUBVERSION WITH ILLEGAL POSSESSION OF FIREARMS. NEITHER IS HE BEING SEPARATELY CHARGED FOR SUBVERSION AND FOR ILLEGAL POSSESSION OF FIREARMS. Thus, the rulings of the Court in *Hernandez, Geronimo* and *Rodriquez* find no application in this case.[13] (Emphasis in the original)

In *Baylosis v. Chavez, Jr.*,[14] this court held that:

x x x The Code allows, for example, separate prosecutions for either murder or rebellion, although not for both where the indictment alleges that the former has been committed in furtherance of or in connection with the latter. **Surely, whether people are killed or injured in connection with a rebellion, or not, the deaths or injuries of the victims are no less real, and the grief of the victims' families no less poignant.**

Moreover, it certainly is within the power of the legislature to determine what acts or omissions other than those set out in the Revised Penal Code or other existing statutes are to be condemned as separate, individual crimes and what penalties should be attached thereto. The power is not diluted or improperly wielded simply because at some prior time the act or omission was but an element or ingredient of another offense, or might usually have been connected with another crime.

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[13] *Id.* at 709-710.

[14] 279 Phil. 448 (1991).

The interdict laid in *Hernandez*, *Enrile* and the other cases cited is against attempts to complex rebellion with the so called "common" crimes committed in furtherance, or in the course, thereof; this, on the authority alone of the first sentence of Article 48 of the Revised Penal Code. Stated otherwise, the ratio of said cases is that Article 48 cannot be invoked as the basis for charging and prosecuting the complex crime of rebellion with murder, etc., for the purpose of obtaining imposition of the penalty for the more serious offense in its maximum period (in accordance with said Art. 48). ***Said cases did not—indeed they could not and were never meant to—proscribe the legislative authority from validly enacting statutes that would define and punish, as offenses sui generis crimes which, in the context of Hernandez, et al. may be viewed as a complex of rebellion with other offenses. There is no constitutional prohibition against this, and the Court never said there was.*** What the Court stated in said cases about rebellion "absorbing" common crimes committed in its course or furtherance must be viewed in light of the fact that at the time they were decided, there were no penal provisions defining and punishing, as specific offenses, crimes like murder, etc. committed in the course or as part of a rebellion. This is no longer true, as far as the present case is concerned, and there being no question that PD 1866 was a valid exercise of the former President's legislative powers.[15] (Emphasis provided)

It is not our intention to wipe out the history of and the policy behind the political offense doctrine. What this separate opinion seeks to accomplish is to qualify the conditions for the application of the doctrine and remove any blanket application whenever political objectives are alleged. The remnants of armed conflict continue. Sooner or later, with a victor that emerges or even with the success of peace negotiations with insurgent groups, some form of transitional justice may need to reckon with different types of crimes committed on the occasion of these armed uprisings. Certainly, crimes that run afoul the basic human dignity of persons must not be tolerated. This is in line with the recent developments in national and international law.[16]

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[15] *Id.* at 462-463.

[16] In August 30, 2011, the Philippines ratified the Rome Statute of the International Criminal Court.

III

International humanitarian law[17] (IHL) is the body of international law that regulates the conduct of armed conflicts, whether of an international or non-international character. This body of law seeks to limit the effects of the conflict on individuals.[18] The 1949 Geneva Conventions and its Additional Protocols are the main instruments that govern IHL.[19] Nevertheless, IHL and the rules and principles contained in the Geneva Conventions are largely regarded in the international sphere as having the character of general or customary international law given the fundamental nature of the rules and "because they constitute intransgressible principles of international customary law."[20]

In the Philippines, Republic Act No. 9851 was enacted in view of its policy to "[renounce] war x x x, [adopt] the generally accepted principles of international law as part of the law of the land and [adhere] to a policy of peace, equality, justice, freedom, cooperation and amity with all nations."[21] Accordingly, "[t]he most serious crimes of concern to the international

[17] *See* Vincent Chetail, 'The contribution of the International Court of Justice to international humanitarian law', 85 IRRC (2003) < http://www.icrc.org/eng/assets/files/other/irrc_850_chetail.pdf> accessed on February 5, 2014. Contemporary IHL developed from the early laws of war (*jus in bello),* the Martens Clause and the "elementary considerations of humanity," and the Hague Conventions of 1907.

[18] *See* 'The Geneva Conventions of 1949 and their Additional Protocols', International Committee of the Red Cross < http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva_conventions/overview-geneva-conventions.htm> accessed on February 5, 2014. *See also* C. Greenwood, *Historical Development and Basis* in The Handbook of Humanitarian Law in Armed Conflicts 9-10 (1995).

[19] The Philippines is a signatory of the 1949 Geneva Conventions. It ratified the conventions on October 10, 1952. The Philippines acceded to Additional Protocol II on December 11, 1986.

[20] M. M. MAGALLONA, *FUNDAMENTALS OF PUBLIC INTERNATIONAL LAW* 297 (2005) *citing Legality of the Threat or Use of Nuclear Weapons,* ICJ Reports, 1996, paras. 79 and 82.

[21] Rep. Act No. 9851 (2009), "An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against

community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes."[22]

Armed conflict in the law is defined as:

> x x x any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within a State: *Provided*, That such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of 12 August 1949, including their common Article 3, apply. **Armed conflict may be** international, that is, between two (2) or more States, including belligerent occupation; or **non-international, that is, between governmental authorities and organized armed groups or between such groups within a State. It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature.**[23] (Emphasis provided)

Article 3 common to the 1949 Geneva Conventions and Additional Protocol II[24] are the foundation of the applicable rules in a non-international or internal armed conflict. Common Article 3, which has attained a customary law character,[25] prescribes a minimum standard to be applied to persons who are not actively taking part in an internal armed conflict. Common Article 3 provides:

Humanity, Organizing Jurisdiction, Designating Special Courts, and For Related Purposes," sec. 2 (a).

[22] Rep. Act. No. 9851 (2009), sec. 2 (e).

[23] Rep. Act. No. 9851 (2009), sec. 3 (c). *See also The Prosecutor v. Dusko Tadic* (Jurisdiction of the Tribunal), Case No. IT-94-1-AR72 (1995).

[24] Protocol Additional To The Geneva Conventions of 12 August 1949, And Relating To The Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977.

[25] *See* J. M. Henckaerts & L. Doswald-Beck, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW* 1-2 (Vol. I [reprinted with corrections], 2009).

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, **shall in all circumstances be treated humanely**, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

a) **violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture**;

b) taking of hostages;

c) outrages upon personal dignity, in particular humiliating and degrading treatment;

d) **the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.**

2) The wounded and sick shall be collected and cared for.

This portion of the provision is substantially reproduced in Section 4, paragraph (b) of Republic Act No. 9851, which provides:

In case of a non-international armed conflict, serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;

(2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;

(3) Taking of hostages; and

(4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

Additional Protocol II supplements Common Article 3 in terms of the rules applicable to internal armed conflict.[26] Additional Protocol II specifies: 1) the guarantees afforded to persons involved in the internal armed conflict; and 2) the obligations of the parties to the internal armed conflict. These rights and duties are seen in Articles 4 to 6, to wit:

Article 4 — Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

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[26] *Article 1 — Material field of application*

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of applications, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature, as not being armed conflicts.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

   a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

   b) collective punishments;

   c) taking of hostages;

   d) acts of terrorism;

   e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

   f) slavery and the slave trade in all their forms;

   g) pillage;

   h) threats to commit any of the foregoing acts.

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Article 5 — Persons whose liberty has been restricted

1. In addition to the provisions of Article 4, the **following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained**:

   a) the wounded and the sick shall be treated in accordance with Article 7;

   b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;

   c) they shall be allowed to receive individual or collective relief;

   d) they shall be allowed to practice their religion and, if

requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;

e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. Those who are **responsible for the internment or detention of the persons referred to in paragraph 1** shall also, within the limits of their capabilities, respect the following provisions relating to such persons:

a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;

b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;

c) places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;

d) they shall have the benefit of medical examinations;

e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.

3. **Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1 *a), c)* and *d),* and 2 *b)* of this Article**.

4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding.

Article 6 — Penal prosecutions

This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.

No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:

a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

d) anyone charged with an offence is presumed innocent until proved guilty according to law;

e) anyone charged with an offence shall have the right to be tried in his presence;

f) no one shall be compelled to testify against himself or to confess guilt.

A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained. (Emphasis provided)

Furthermore, protection for the civilian population is expressly provided for in Additional Protocol II:

Article 13 — Protection of the civilian population

The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

Some have asserted that Common Article 3 of the Geneva Conventions belongs to the body of *jus cogens* norms.[27] *Jus cogens* norms under the Vienna Convention of Law of the Treaties are "norm[s] accepted and recognized by the international community of States as a whole as [norms] **from which no derogation is permitted** and which can be modified

[27] *See* Rafael Nieto-Navia, '*International Peremptory Norms* (*Jus Cogens*) *and International Humanitarian Law*' (2001) < http://www.iccnow.org/documents/WritingColombiaEng.pdf> pp. 24-26, accessed on February 6, 2014. *See also* Ulf Linderfalk, '*The Effect of Jus Cogens Norms: Whoever Opened Pandora's Box, Did You Ever Think About the Consequences?*', Vol. 18, no. 5 European Journal of International Law (2007) < http://www.ejil.org/pdfs/18/5/248.pdf> pp. 853"871, accessed on February 6, 2014. Consider Ulf's discussion on the proposition that IHL, in relation to the right to self-defense and the right to use of force, has *jus cogens* character, pp. 865-867.

only by a subsequent norm of general international law having the same character."[28]

The principles embedded in Common Article 3 have been held to apply even to international armed conflict, thus, depicting a universal character.

> It lays down fundamental standards which are applicable at all times, in all circumstances and to all States and from which no derogation at any time is permitted. As was stated, it "sets forth a minimum core of mandatory rules [and], reflects the fundamental humanitarian principles which underlie international humanitarian law as a whole, and upon which the Geneva Conventions in their entirety are based. **These principles, the object of which is the respect for the dignity of the human person, developed as a result of centuries of warfare and had already become customary law at the time of the adoption of the Geneva Conventions because they reflect the most universally recognized humanitarian principles.**"[29] (Emphasis provided)

Hence, non-observance of the minimum standard provided for in Common Article 3 triggers a violation of well-accepted principles of international law.

In a similar vein, there exist international human rights laws or IHRL (not necessarily belonging to *international humanitarian* law) that are of *jus cogens* nature. Thus:

> There is a consensus x x x about the *jus cogens* nature of a number of prohibitions formulated in international human rights law x x x. **These include at a minimum the prohibition of aggression, slavery**

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[28] Article 53. Treaties conflicting with a peremptory norm of general international law ("*jus cogens*")

A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

[29] *See* Rafael Nieto-Navia, '*International Peremptory Norms* (*Jus Cogens*) *and International Humanitarian Law*' (2001) < http://www.iccnow.org/documents/WritingColombiaEng.pdf> p. 26, accessed on February 6, 2014.

and the slave trade, genocide x x x, racial discrimination, apartheid and torture x x x, as well as basic rules of international humanitarian law applicable in armed conflict, and the right to self-determination.[30] (Emphasis provided)

International humanitarian law and international human rights law are two sets of regimes in international law. The two regimes have been compared and contrasted with each other, to wit:

> The two sets of rules certainly have a different history and often a different field of application, both *ratione personae* and *ratione temporis*. Human rights thus apply to *all* people and humanitarian law applies to *certain* groups of persons (for example, to the wounded, to prisoners o[f] war, to civilians) and, furthermore, humanitarian law applies only in times of armed conflict. On the other hand, 'human rights' and 'humanitarian law' regulate, *ratione materiae*, similar rights at least insofar that they all intend to increase the protection of individuals, alleviate pain and suffering and secure the minimum standard of persons in various situations.[31] (Emphasis in the original)

Thus, all persons are protected in both times of war and peace. The protection accorded by human rights laws does not cease to apply when armed conflict ensues.[32] Still, some "human rights" are allowed to be derogated in times of "emergency which threatens the life of the nation."[33] Nevertheless, provisions on the right to life, prohibition from torture, inhuman and degrading treatment, and slavery remain free from any derogation whatsoever, having acquired a *jus cogens* character.[34]

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[30] O. DE SCHUTTER, *INTERNATIONAL HUMAN RIGHTS LAW*: CASES, MATERIALS, COMMENTARY 65 (2010).

[31] I. DETTER, *THE LAW OF WAR* 160-161 (2nd edition, 2000).

[32] *See* M. M. MAGALLONA, *FUNDAMENTALS OF PUBLIC INTERNATIONAL LAW* 311-312 (2005) *citing* the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Reports, 2004, par. 106.

[33] *See* Art. 4, International Covenant on Civil and Political Rights or ICCPR.

[34] I. DETTER, *THE LAW OF WAR* 162 (2nd edition, 2000) *citing* Articles 6, 7, and 8 of the ICCPR.

We do not need to go further to determine whether these norms form part of "generally accepted principles of international law" to determine whether they are "part of the law of the land."[35] At minimum, they have been incorporated through statutory provisions.

Rep. Act No. 9851 defines and provides for the penalties of crimes against humanity, serious violations of IHL, genocide, and other crimes against humanity.[36] This law provides for the non-prescription of the prosecution of and execution of sentences imposed with regard to the crimes defined in the Act.[37] It also provides for the jurisdiction of the Regional Trial Court over the crimes defined in the Act.[38]

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[35] Consti., Art II, sec. 2. The Philippines renounces war as an instrument of national policy, *adopts the generally accepted principles of international law as part of the law of the land* and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. (Emphasis provided)

[36] Rep. Act No. 9851 (2009), sec. 4 (b). In case of a non-international armed conflict, serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

(1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;

(2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;

(3) Taking of hostages; and

(4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

[37] Rep. Act No. 9851 (2009), sec. 11. *Non-prescription.* - The crimes defined and penalized under this Act, their prosecution, and the execution of sentences imposed on their account, shall not be subject to any prescription.

[38] Rep. Act No. 9851 (2009), sec. 18. *Philippine Courts, Prosecutors and Investigators.* - The Regional Trial Courts of the Philippines shall have original and exclusive jurisdiction over the crimes punishable under this Act. Their judgments may be appealed or elevated to the Court of Appeals and to the Supreme Court as provided by law.

These crimes are, therefore, separate from or independent from the crime of rebellion even if they occur on the occasion of or argued to be connected with the armed uprisings.

Not only does the statute exist. Relevant to these cases are the Declarations made by the Communist Party of the Philippines/ New People's Army/National Democratic Front or CPP/NPA/ NDF invoking the Geneva Conventions and its 1977 Additional Protocols.

One of these documents is the Declaration of Adherence to International Humanitarian Law dated August 15, 1991, whereby the National Democratic Front "**formally declare[d] its adherence to international humanitarian law, especially Article 3 common to the Geneva Conventions as well as Protocol II additional to said conventions, in the conduct of armed conflict in the Philippines.**"[39]

We may take judicial notice that on July 5, 1996, the National Democratic Front issued the Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977. The National Democratic Front stated that:

Being a party to the armed conflict, civil war or war of national liberation and authorized by the revolutionary people and forces to

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The Supreme Court shall designate special courts to try cases involving crimes punishable under this Act. For these cases, the Commission on Human Rights, the Department of Justice, the Philippine National Police or other concerned law enforcement agencies shall designate prosecutors or investigators as the case may be.

The State shall ensure that judges, prosecutors and investigators, especially those designated for purposes of this Act, receive effective training in human rights, International Humanitarian Law and International Criminal Law.

See also the Rome Statute which the Philippines ratified on August 30, 2011. *See* par. 10 of the Preamble, Article 1, and Article 17 of the Rome Statute regarding the International Criminal Court's complementary jurisdiction over a case when a State party is unwilling or unable to carry out an investigation or prosecution.

[39] Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977, National Democratic Front of the Philippines Human Rights Monitoring Committee, Annex D, 98 (Booklet Number 6, 2005).

represent them in diplomatic and other international relations in the ongoing peace negotiations with the GRP, we the National Democratic Front of the Philippines hereby solemnly declare in good faith to undertake to apply the Geneva Conventions and Protocol I to the armed conflict in accordance with Article 96, paragraph 3 in relation to Article 1, paragraph 4 of Protocol I.

The NDFP is rightfully and dutifully cognizant that this declaration x x x shall have in relation to the armed conflict with the GRP, the following effects:

a. the Geneva Conventions and Protocol I are brought into force for the NDFP as a Party to the conflict with immediate effect;

b. the NDFP assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Geneva Conventions and Protocol I; and

c. the Geneva Conventions and this Protocol are equally binding upon all Parties to the conflict.[40] (Emphasis in the original)

In addition, in the context of peace negotiations, it appears that there is a Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) executed by the Government of the Republic of the Philippines (GRP) and the CPP/NPA/NDF. This agreement establishes the recognition of the existence, protection, and application of human rights and principles of international humanitarian law as well as provides the following rights and protections to individuals by the CPP/NPA/NDF. The agreement partly provides:

PART III

RESPECT FOR HUMAN RIGHTS

Article 1. In the exercise of their inherent rights, the Parties shall adhere to and be bound by the principles and standards embodied in international instruments on human rights.

Article 2. This Agreement seeks to confront, remedy and prevent the most serious human rights violations in terms of civil and political

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[40] Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977, National Democratic Front of the Philippines Human Rights Monitoring Committee, Annex D, 12-13 (Booklet Number 6, 2005).

rights, as well as to uphold, protect and promote the full scope of human rights and fundamental freedoms, including:

1. The right to self-determination of the Filipino nation by virtue of which the people should fully and freely determine their political status, pursue their economic, social and cultural development, and dispose of their natural wealth and resources for their own welfare and benefit towards genuine national independence, democracy, social justice and development.

x x x x x x x x x

3. The right of the victims and their families to seek justice for violations of human rights, including adequate compensation or indemnification, restitution and rehabilitation, and effective sanctions and guarantees against repetition and impunity.

4. The right to life, especially against summary executions (*salvagings*), involuntary disappearances, massacres and indiscriminate bombardments of communities, and the right not to be subjected to campaigns of incitement to violence against one's person.

x x x x x x x x x

7. The right not to be subjected to physical or mental torture, solitary confinement, rape and sexual abuse, and other inhuman, cruel or degrading treatment, detention and punishment.

x x x x x x x x x

9. The right to substantive and procedural due process, to be presumed innocent until proven guilty, and against self-incrimination.

x x x x x x x x x

PART IV
RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

Article 1. In the exercise of their inherent rights, the Parties to the armed conflict shall adhere to and be bound by the generally accepted principles and standards of international humanitarian law.

Article 2. These principles and standards apply to the following persons:

1. **civilians or those taking no active part in the hostilities**;
2. members of armed forces who have surrendered or laid down their arms;
3. those placed hors de combat by sickness, wounds or any other cause;
4. **persons deprived of their liberty for reasons related to the armed conflict**; and,
5. relatives and duly authorized representatives of above-named persons.

Article 3. The following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the persons enumerated in the preceding Article 2:

1. **violence to life and person, particularly killing or causing injury, being subjected to physical or mental torture, mutilation, corporal punishment, cruel or degrading treatment and all acts of violence and reprisals, including hostage-taking, and acts against the physical well-being, dignity, political convictions and other human rights**;
2. holding anyone responsible for an act that she/he has not committed and punishing anyone without complying with all the requisites of due process;
3. **requiring persons deprived of their liberty for reasons related to the armed conflict to disclose information other than their identity**;
4. **desecration of the remains of those who have died in the course of the armed conflict or while under detention, and breach of duty to tender immediately such remains to their families or to give them decent burial**;
5. **failure to report the identity, personal condition and circumstances of a person deprived of his/her liberty for reasons related to the armed conflict to the Parties to enable them to perform their duties and responsibilities under this Agreement and under international humanitarian law**;

x x x (Emphasis provided)

The CARHRIHL has provided a clear list of rights and duties that the parties must observe in recognizing the application of human rights and international humanitarian laws. The CPP/NPA/NDF, parties to an ongoing armed conflict and to which petitioners allegedly belong, are required to observe, at the minimum, the humane treatment of persons involved in the conflict, whether *hors de combat* or a civilian.

In all these instruments, even spies are accorded protection under Common Article 3 of the Geneva Conventions. Common Article 3 and Additional Protocol II are broad enough to secure fundamental guarantees to persons not granted prisoner of war or civilian status, such as protection from summary execution and right to fair trial.[41] These fundamental guarantees are also found in Article 75, in relation to Articles 45 and 46 of Additional Protocol I.[42] Spies and civilians suspected of being spies are also accorded protection under Rep. Act No. 9851.

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[41] *See* J. M. Henckaerts & L. Doswald-Beck, *Customary International Humanitarian Law* 2363 (Vol. II, 2005).

[42] Additional Protocol I, however, pertains to the protection of victims of international armed conflicts. Article 75 on Fundamental guarantees provides:

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) violence to the life, health, or physical or mental well-being of persons, in particular:

(i) murder;

(ii) torture of all kinds, whether physical or mental;

(iii) corporal punishment; and

(iv) mutilation;

IV

Concomitantly, persons committing crimes against humanity or serious violations of international humanitarian law, international human rights laws, and Rep. Act No. 9851 must not be allowed to hide behind a doctrine crafted to recognize the different nature of armed uprisings as a result of political dissent. The contemporary view is that these can never be considered as acts in furtherance of armed conflict no matter what the motive. Incidentally, this is the view also apparently shared by the CPP/NPA/NDF and major insurgent groups that are part of the present government's peace process.

(b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(c) the taking of hostages;

(d) collective punishments; and

(e) threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

We, therefore, should nuance our interpretation of what will constitute rebellion.

The rebel, in his or her effort to assert a better view of humanity, cannot negate himself or herself. Torture and summary execution of enemies or allies are never acts of courage. They demean those who sacrificed and those who gave their lives so that others may live justly and enjoy the blessings of more meaningful freedoms.

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d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt;

(g) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(i) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

(j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

(a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and

Torture and summary execution — in any context — are shameful, naked brutal acts of those who may have simply been transformed into desperate cowards. Those who may have suffered or may have died because of these acts deserve better than to be told that they did so in the hands of a rebel.

ACCORDINGLY, I concur that these petitions be dismissed and the Regional Trial Courts be directed to hear the cases with due and deliberate dispatch taking these views into consideration should the evidence so warrant.

FIRST DIVISION

[A.C. No. 8761. February 12, 2014]

WILBERTO C. TALISIC, *complainant, vs.* **ATTY. PRIMO R. RINEN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; IMPORTANCE OF NOTARY.— "[F]aithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or jurat is sacrosanct." "The notarization of a document carries considerable legal effect. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity. Thus, notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree x x x."

(b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

2. ID.; ID.; DUTIES; TO NOTARIZE A DOCUMENT ONLY WHEN THE SIGNATORIES ARE THE VERY SAME PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND TRUTH OF THE STATEMENTS THEREIN.— It must be stressed that, "a notary public's function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity." Towards this end, the Court emphasized in *Bautista v. Atty. Bernabe* that "[a] notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The presence of the parties to the deed will enable the notary public to verify the genuineness of the signature of the affiant."

R E S O L U T I O N

REYES, *J.*:

This is an administrative case instituted by complainant Wilberto C. Talisic (Wilberto) against Atty. Primo R. Rinen[1] (Atty. Rinen), charging the latter with falsification of an Extra Judicial Partition with Sale[2] which allowed the transfer to spouses Benjamin Durante and Eleonor Laviña (Spouses Durante) of a parcel of land formerly owned by Wilberto's mother, Aurora Corpuz (Aurora). The property, measuring 3,817 square meters and situated in *Barangay* Langgas, Infanta, Quezon, was formerly covered by Original Certificate of Title No. P-4875 under Aurora's name.[3] After Atty. Rinen filed his comment on the complaint, the Court referred the case to the Integrated Bar of the Philippines (IBP), Commission on Bar Discipline, for investigation, report and recommendation.[4]

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[1] Referred to as Atty. Primo R. Rinen, Sr. in pleadings filed by the respondent.

[2] *Rollo*, p. 32A.

[3] *Id.* at 31A.

[4] *Id.* at 17.

Wilberto claimed that his mother Aurora died on May 7, 1987, leaving behind as heirs her spouse, Celedonio Talisic, and their three children, namely: Arlene Talisic Villarazo, Wilberto and Alvin Corpuz Talisic. It was only after his father's death on November 2, 2000 that Wilberto and his siblings knew of the transfer of the subject parcel *via* the subject deed. While Wilberto believed that his father's signature on the deed was authentic, his and his siblings' supposed signatures were merely forged. Wilberto also pointed out that even his name was erroneously indicated in the deed as "Wilfredo."[5]

For his defense, Atty. Rinen denied the charge against him and explained that it was only on April 7, 1994 that he came to know of the transaction between the Spouses Durante and the Talisics, when they approached him in his office as the then Presiding Judge of the Municipal Trial Court, Real, Quezon, to have the subject deed prepared and notarized. His clerk of court prepared the deed and upon its completion, ushered the parties to his office for the administration of oath.[6] The deed contained his certification that at the time of the document's execution, "no notary public was available to expedite the transaction of the parties." Notarial fees paid by the parties were also covered by a receipt issued by the Treasurer of the Municipality of Real, Quezon.[7]

After due proceedings, Investigating Commissioner Felimon C. Abelita III (Commissioner Abelita) issued the Report and Recommendation[8] dated November 20, 2012 for the cancellation of Atty. Rinen's notarial commission and his suspension from notarial practice for a period of one year.[9] The report indicated that per Atty. Rinen's admission, the subject deed was prepared in his office and acknowledged before him. Although there was no evidence of forgery on his part, he was negligent in not

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[5] *Id.* at 1.

[6] *Id.* at 14-15, 57.

[7] *Id.* at 2.

[8] *Id.* at 136-137.

[9] *Id.* at 137.

requiring from the parties to the deed their presentation of documents as proof of identity. Atty. Rinen's failure to properly satisfy his duties as a notary public was also shown by the inconsistencies in the dates that appear on the deed, to wit: "1994 as to the execution; 1995 when notarized; [and] entered as Series of 1992 in the notarial book x x x."[10]

In the meantime, Atty. Rinen filed a motion for reconsideration[11] of Commissioner Abelita's recommendation. The IBP Board of Governors, nonetheless, adopted and approved on March 20, 2013, via *Resolution* No. XX-2013-247, the Investigating Commissioner's Report and Recommendation.[12]

The Court agrees with the findings and recommendations of the IBP.

"[F]aithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or jurat is sacrosanct."[13] "The notarization of a document carries considerable legal effect. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity. Thus, notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree x x x."[14]

It must then be stressed that, "a notary public's function should not be trivialized and a notary public must discharge his powers and duties which are impressed with public interest, with accuracy and fidelity."[15] Towards this end, the Court emphasized in *Bautista v. Atty. Bernabe*[16] that "[a] notary

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[10] *Id.*

[11] *Id.* at 130-131.

[12] *Id.* at 135.

[13] *Linco v. Lacebal,* A.C. No. 7241, October 17, 2011, 659 SCRA 130, 135.

[14] *Tigno v. Spouses Aquino,* 486 Phil. 254, 267 (2004).

[15] *Maria v. Cortez,* A.C. No. 7880, April 11, 2012, 669 SCRA 87, 93.

[16] 517 Phil. 236 (2006).

public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The presence of the parties to the deed will enable the notary public to verify the genuineness of the signature of the affiant."[17]

In the present case, Atty. Rinen did not deny his failure to personally verify the identity of all parties who purportedly signed the subject document and whom, as he claimed, appeared before him on April 7, 1994. Such failure was further shown by the fact that the pertinent details of the community tax certificates of Wilberto and his sister, as proof of their identity, remained unspecified in the subject deed's acknowledgment portion. Clearly, there was a failure on the part of Atty. Rinen to exercise the due diligence that was required of him as a notary public *ex-officio*. The lapses he committed in relation to such function then justified the recommendations presented by the IBP.

The fact that Atty. Rinen was a trial court judge during the time that he administered the oath for the subject deed did not relieve him of compliance with the same standards and obligations imposed upon other commissioned notaries public. He also could not have simply relied on his clerk of court to perform the responsibilities attached to his function, especially as it pertained to ensuring that the parties to the document were then present, performing an act that was of their own free will and deed. "Notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public."[18] It converts a private document into a public one, making it admissible in court without further proof of its authenticity. Thus, "notaries public must observe with utmost care the basic requirements in the performance of their duties."[19]

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[17] *Id.* at 240.

[18] *Linco v. Lacebal, supra* note 13, at 135.

[19] *Id.*

Otherwise, the confidence of the public in the integrity of public instruments would be undermined.[20]

WHEREFORE, as recommended by the Integrated Bar of the Philippines, the Court **REVOKES** the notarial commission which Atty. Primo R. Rinen may presently have, and **DISQUALIFIES** him from being commissioned as a notary public for one year, effective immediately. He is **WARNED** that a repetition of the same or similar act in the future shall merit a more severe sanction. He is **DIRECTED** to report to this Court the date of his receipt of this Resolution to enable it to determine when the revocation of his notarial commission and his disqualification from being commissioned as notary public shall take effect.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to Atty. Primo R. Rinen's personal record. Likewise, copies shall be furnished to 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.

SECOND DIVISION

[G.R. No. 171557. February 12, 2014]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **RODOLFO O. DE GRACIA,** *respondent.*

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[20] *Id.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; VOID AND VOIDABLE MARRIAGES; PSYCHOLOGICAL INCAPACITY; REFERS TO MENTAL – NOT MERELY PHYSICAL – INCAPACITY THAT CAUSES A PARTY TO BE TRULY INCOGNITIVE OF THE BASIC MARITAL COVENANTS; ELUCIDATED.— "Psychological incapacity,"as a ground to nullify a marriage under Article 36 of the Family Code, should refer to no less than a mental – not merely physical – incapacity that causes a party to be **truly incognitive of the basic marital covenants** that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed in Article 68 of the Family Code, among others, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of "psychological incapacity" to the **most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage**. In *Santos v. CA* (*Santos*), the Court first declared that psychological incapacity must be characterized by: (***a***) **gravity** (*i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage); (***b***) **juridical antecedence** (*i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage); and (***c***) **incurability** (*i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved). The Court laid down more definitive guidelines in the interpretation and application of Article 36 of the Family Code in *Republic of the Phils. v. CA,* x x x These guidelines incorporate the basic requirements that the Court established in *Santos*.

2. ID.; ID.; ID.; ID.; ID.; EMOTIONAL IMMATURITY AND IRRESPONSIBILITY CANNOT BE EQUATED WITH PSYCHOLOGICAL INCAPACITY.— [T]he Court, in *Dedel v. CA*, held that therein respondent's **emotional immaturity and irresponsibility** could not be equated with psychological incapacity as it was not shown that these acts are manifestations of a disordered personality which make her **completely unable to discharge the essential marital obligations of the marital**

state, not merely due to her **youth, immaturity or sexual promiscuity**. In the same light, the Court, in the case of *Pesca v. Pesca (Pesca)*, ruled against a declaration of nullity, as petitioner therein "utterly failed, both in her allegations in the complaint and in her evidence, to make out a case of psychological incapacity on the part of respondent, let alone at the time of solemnization of the contract, so as to warrant a declaration of nullity of the marriage," significantly noting that the "[**e]motional immaturity and irresponsibility**, invoked by her, cannot be equated with psychological incapacity."

3. ID.; ID.; ID.; ID.; MUST BE ESTABLISHED BY INDEPENDENT EVIDENCE OTHER THAN EXPERT OPINIONS BY PSYCHOLOGISTS.— [A]lthough expert opinions furnished by psychologists regarding the psychological temperament of parties are usually given considerable weight by the courts, the existence of psychological incapacity must still be proven by independent evidence. After poring over the records, the Court, however, does not find any such evidence sufficient enough to uphold the court *a quo*'s nullity declaration. To the Court's mind, Natividad's refusal to live with Rodolfo and to assume her duties as wife and mother as well as her emotional immaturity, irresponsibility and infidelity do not rise to the level of psychological incapacity that would justify the nullification of the parties' marriage. Indeed, to be declared clinically or medically incurable is one thing; to refuse or be reluctant to perform one's duties is another.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cadigal & Associates Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari* [1] are the Decision [2] dated June 2, 2005 and Resolution [3] dated February 3, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 69103 which affirmed the Decision [4] dated October 17, 2000 of the Regional Trial Court of Zamboanga del Norte, Branch 11 (RTC) in Civil Case No. S-665 declaring the marriage of respondent Rodolfo O. De Gracia (Rodolfo) and Natividad N. Rosalem (Natividad) void on the ground of psychological incapacity pursuant to Article 36 of the Family Code of the Philippines [5] (Family Code).

The Facts

Rodolfo and Natividad were married on February 15, 1969 at the Parish of St. Vincent Ferrer in Salug, Zamboanga del Norte. [6] They lived in Dapaon, Sindangan, Zamboanga del Norte and have two (2) children, namely, Ma. Reynilda R. De Gracia (Ma. Reynilda) and Ma. Rizza R. De Gracia (Ma. Rizza), who were born on August 20, 1969 and January 15, 1972, respectively.[7]

On December 28, 1998, Rodolfo filed a verified complaint for declaration of nullity of marriage (complaint) before the RTC, docketed as Civil Case No. S-665, alleging that Natividad was psychologically incapacitated to comply with her essential marital obligations. In compliance with the Order[8] dated January

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[1] *Rollo*, pp. 28-52.

[2] *Id.* at 55-68. Penned by Associate Justice Romulo V. Borja, with Associate Justices Rodrigo F. Lim, Jr. and Normandie B. Pizarro concurring.

[3] *Id.* at 70-72.

[4] *Id.* at 87-100. Penned by Judge Wilfredo G. Ochotorena.

[5] Executive Order No. 209, as amended, entitled "THE FAMILY CODE OF THE PHILIPPINES."

[6] Records, p. 4.

[7] See *rollo*, p. 56.

[8] Records, p. 7.

5, 1999 of the RTC, the public prosecutor conducted an investigation to determine if collusion exists between Rodolfo and Natividad and found that there was none. [9] Trial on the merits then ensued.

In support of his complaint, Rodolfo testified, among others, that he first met Natividad when they were students at the Barangay High School of Sindangan, [10] and he was forced to marry her barely three (3) months into their courtship in light of her accidental pregnancy. [11] At the time of their marriage, he was 21 years old, while Natividad was 18 years of age. He had no stable job and merely worked in the gambling cockpits as "*kristo*" and "*bangkero sa hantak.*" When he decided to join and train with the army, [12] Natividad left their conjugal home and sold their house without his consent. [13] Thereafter, Natividad moved to Dipolog City where she lived with a certain Engineer Terez (Terez), and bore him a child named Julie Ann Terez. [14] After cohabiting with Terez, Natividad contracted a second marriage on January 11, 1991 with another man named Antonio Mondarez and has lived since then with the latter in Cagayan de Oro City. [15] From the time Natividad abandoned them in 1972, Rodolfo was left to take care of Ma. Reynilda and Ma. Rizza [16] and he exerted earnest efforts to save their marriage which, however, proved futile because of Natividad's psychological incapacity that appeared to be incurable. [17]

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

[10] *Id.* at 83.

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

[12] *Id.* at 84.

[13] *Id.* at 85.

[14] *Id.* at 89.

[15] *Id.* at 45.

[16] *Id.*

[17] *Id.* at 89-90.

For her part, Natividad failed to file her answer, as well as appear during trial, despite service of summons.[18] Nonetheless, she informed the court that she submitted herself for psychiatric examination to Dr. Cheryl T. Zalsos (Dr. Zalsos) in response to Rodolfo's claims. [19] Rodolfo also underwent the same examination. [20]

In her two-page psychiatric evaluation report, [21] Dr. Zalsos stated that both Rodolfo and Natividad were psychologically incapacitated to comply with the essential marital obligations, finding that both parties suffered from "utter emotional immaturity [which] is unusual and unacceptable behavior considered [as] deviant from persons who abide by established norms of conduct." [22] As for Natividad, Dr. Zalsos also observed that she lacked the willful cooperation of being a wife and a mother to her two daughters. Similarly, Rodolfo failed to perform his obligations as a husband, adding too that he sired a son with another woman. Further, Dr. Zalsos noted that the mental condition of both parties already existed at the time of the celebration of marriage, although it only manifested after. Based on the foregoing, Dr. Zalsos concluded that the "couple's union was bereft of the mind, will and heart for the obligations of marriage." [23]

On February 10, 1999, the Office of the Solicitor General (OSG), representing petitioner Republic of the Philippines (Republic), filed an opposition [24] to the complaint, contending that the acts committed by Natividad did not demonstrate psychological incapacity as contemplated by law, but are mere grounds for legal separation under the Family Code. [25]

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[18] *Id.* at 19-20.

[19] *Id.* at 28.

[20] See *rollo*, p. 94.

[21] Records, pp. 37-38.

[22] *Id.* at 38.

[23] *Id.*

[24] *Id.* at 9-14.

[25] See Article 55 of the Family Code.

The RTC Ruling

In a Decision [26] dated October 17, 2000, the RTC declared the marriage between Rodolfo and Natividad void on the ground of psychological incapacity. It relied on the findings and testimony of Dr. Zalsos, holding that Natividad's emotional immaturity exhibited a behavioral pattern which in psychiatry constitutes a form of personality disorder that existed at the time of the parties' marriage but manifested only thereafter. It likewise concurred with Dr. Zalsos's observation that Natividad's condition is incurable since it is deeply rooted within the make-up of her personality. Accordingly, it concluded that Natividad could not have known, much more comprehend the marital obligations she was assuming, or, knowing them, could not have given a valid assumption thereof. [27]

The Republic appealed to the CA, averring that there was no showing that Natividad's personality traits constituted psychological incapacity as envisaged under Article 36 of the Family Code, and that the testimony of the expert witness was not conclusive upon the court. [28]

The CA Ruling

In a Decision [29] dated June 2, 2005, the CA affirmed the ruling of the RTC, finding that while Natividad's emotional immaturity, irresponsibility and promiscuity by themselves do not necessarily equate to psychological incapacity, "their degree or severity, as duly testified to by Dr. Zalsos, has sufficiently established a case of psychological disorder so profound as to render [Natividad] incapacitated to perform her essential marital obligations."[30]

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[26] *Rollo,* pp. 87-100.

[27] *Id.* at 96.

[28] CA *Rollo,* p. 27.

[29] *Rollo,* pp. 55-68.

[30] *Id.* at 67.

The Republic moved for reconsideration which was, however, denied in a Resolution [31] dated February 3, 2006, hence, the instant petition.

The Issue Before the Court

The primordial issue in this case is whether or not the CA erred in sustaining the RTC's finding of psychological incapacity.

The Ruling of the Court

The petition is meritorious.

"Psychological incapacity," as a ground to nullify a marriage under Article 36[32] of the Family Code, should refer to no less than a mental – not merely physical – incapacity that causes a party to be **truly incognitive of the basic marital covenants** that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed in Article 68 [33] of the Family Code, among others, [34] include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of "psychological incapacity" to the **most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage**. [35] In *Santos v. CA* [36] (*Santos*), the

[31] *Id.* at 70-72.

[32] Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

[33] Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[34] Also includes those provided under Articles 68 to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same code in regard to parents and their children. (See Guideline 6 in *Rep. of the Phils. v. CA*, 335 Phil. 664, 678 [1997].)

[35] *Santos v. CA*, G.R. No. 112019, January 4, 1995, 240 SCRA 20, 40 (1995).

[36] *Id.* at 39.

Court first declared that psychological incapacity must be characterized by: (***a***) **gravity** (*i.e.*, it must be grave and serious such that the party would be incapable of carrying out the ordinary duties required in a marriage); (***b***) **juridical antecedence** (*i.e.*, it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage); and (***c***) **incurability** (*i.e.*, it must be incurable, or even if it were otherwise, the cure would be beyond the means of the party involved).[37] The Court laid down more definitive guidelines in the interpretation and application of Article 36 of the Family Code in *Republic of the Phils. v. CA*,[38] whose salient points are footnoted hereunder.[39] These

[37] *Dimayuga-Laurena v. CA*, 587 Phil. 597, 607-608 (2008).

[38] *Supra* note 34.

[39] (1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of ejusdem generis, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of

guidelines incorporate the basic requirements that the Court established in *Santos*.[40]

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the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such insurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. . . .

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characteriological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. . . .

xxx xxx xxx

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution of the court. The Solicitor General shall discharge the equivalent function of the defensor vinculi contemplated under Canon 1095. (*Id.* at 276-280.)

[40] *Republic v. Galang*, G.R. No. 168335, June 6, 2011, 650 SCRA 524, 535-537.

Keeping with these principles, the Court, in *Dedel v. CA*,[41] held that therein respondent's **emotional immaturity and irresponsibility** could not be equated with psychological incapacity as it was not shown that these acts are manifestations of a disordered personality which make her **completely unable to discharge the essential marital obligations of the marital state**, not merely due to her **youth, immaturity or sexual promiscuity**.[42] In the same light, the Court, in the case of *Pesca v. Pesca*[43] *(Pesca)*, ruled against a declaration of nullity, as petitioner therein "utterly failed, both in her allegations in the complaint and in her evidence, to make out a case of psychological incapacity on the part of respondent, let alone at the time of solemnization of the contract, so as to warrant a declaration of nullity of the marriage," significantly noting that the "[**e]motional immaturity and irresponsibility**, invoked by her, cannot be equated with psychological incapacity." In *Pesca*, the Court upheld the appellate court's finding that the petitioner therein had not established that her husband "showed signs of mental incapacity as would cause him to be truly incognitive of the basic marital covenant, as so provided for in Article 68 of the Family Code; that the incapacity is grave, has preceded the marriage and is incurable; that his incapacity to meet his marital responsibility is because of a psychological, not physical illness; that the root cause of the incapacity has been identified medically or clinically, and has been proven by an expert; and that the incapacity is permanent and incurable in nature."[44]

The Court maintains a similar view in this case. Based on the evidence presented, there exists insufficient factual or legal basis to conclude that Natividad's emotional immaturity, irresponsibility, or even sexual promiscuity, can be equated with psychological incapacity.

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[41] 466 Phil. 226 (2004).

[42] *Id.* at 233.

[43] 408 Phil. 713 (2001).

[44] *Id.* at 718.

The RTC, as affirmed by the CA, heavily relied on the psychiatric evaluation report of Dr. Zalsos which does not, however, explain in reasonable detail how Natividad's condition could be characterized as grave, deeply-rooted, and incurable within the parameters of psychological incapacity jurisprudence. Aside from failing to disclose the types of psychological tests which she administered on Natividad, Dr. Zalsos failed to identify in her report the root cause of Natividad's condition and to show that it existed at the time of the parties' marriage. Neither was the gravity or seriousness of Natividad's behavior in relation to her failure to perform the essential marital obligations sufficiently described in Dr. Zalsos's report. Further, the finding contained therein on the incurability of Natividad's condition remains unsupported by any factual or scientific basis and, hence, appears to be drawn out as a bare conclusion and even self-serving. In the same vein, Dr. Zalsos's testimony during trial, which is essentially a reiteration of her report, also fails to convince the Court of her conclusion that Natividad was psychologically incapacitated. Verily, although expert opinions furnished by psychologists regarding the psychological temperament of parties are usually given considerable weight by the courts, the existence of psychological incapacity must still be proven by independent evidence.[45] After poring over the records, the Court, however, does not find any such evidence sufficient enough to uphold the court *a quo*'s nullity declaration. To the Court's mind, Natividad's refusal to live with Rodolfo and to assume her duties as wife and mother as well as her emotional immaturity, irresponsibility and infidelity do not rise to the level of psychological incapacity that would justify the nullification of the parties' marriage. Indeed, to be declared clinically or medically incurable is one thing; to refuse or be reluctant to perform one's duties is another. To hark back to what has been earlier discussed, psychological incapacity refers only to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[46] In the final

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[45] See *Mendoza v. Republic*, G.R. No. 157649, November 12, 2012, 685 SCRA 16, 25-32.

[46] *Republic v. Galang*, *supra* note 40, at 535.

analysis, the Court does not perceive a disorder of this nature to exist in the present case. Thus, for these reasons, coupled too with the recognition that marriage is an inviolable social institution and the foundation of the family,[47] the instant petition is hereby granted.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 2, 2005 and Resolution dated February 3, 2006 of the Court of Appeals in CA-G.R. CV No. 69103 are **REVERSED** and **SET ASIDE**. Accordingly, the complaint for declaration of nullity of marriage filed under Article 36 of the Family Code is **DISMISSED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171590. February 12, 2014]

BIGNAY EX-IM PHILIPPINES, INC., *petitioner, vs.* **UNION BANK OF THE PHILIPPINES,** *respondent.*

[G.R. No. 171598. February 12, 2014]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **BIGNAY EX-IM PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; BREACH OF CONTRACT; GROSS NEGLIGENCE AMOUNTING TO BAD

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[47] See Section 2, Article XV of the 1987 Philippine Constitution.

FAITH IS A GROUND FOR RECOVERY OF DAMAGES; CASE AT BAR. — [T]his Court is convinced – from an examination of the evidence and by the concurring opinions of the courts below – that Bignay purchased the property without knowledge of the pending Civil Case No. Q-52702. Union Bank is therefore answerable for its express undertaking under the December 20, 1989 deed of sale to "defend its title to the Parcel/s of Land with improvement thereon against the claims of any person whatsoever." By this warranty, Union Bank represented to Bignay that it had title to the property, and by assuming the obligation to defend such title, it promised to do so at least in good faith and with sufficient prudence, if not to the best of its abilities. The record reveals, however, that Union Bank was grossly negligent in the handling and prosecution of Civil Case No. Q-52702. x x x Such negligence in the handling of the case is far from coincidental; it is decidedly glaring, and amounts to bad faith. "[N]egligence may be occasionally so gross as to amount to malice [or bad faith]." Indeed, in *culpa contractual* or breach of contract, gross negligence of a party amounting to bad faith is a ground for the recovery of damages by the injured party. x x x Indeed, "whatever is repugnant to the standards of human knowledge, observation and experience becomes incredible and must lie outside judicial cognizance."

2. ID.; SPECIAL CONTRACTS; SALES; OBLIGATIONS OF THE VENDOR; CONDITIONS AND WARRANTIES; WARRANTY IN CASE OF EVICTION; EFFECT THEREOF.— Eviction shall take place whenever by a final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or of a part of the thing purchased. In case eviction occurs, the vendee shall have the right to demand of the vendor, among others, the return of the value which the thing sold had at the time of the eviction, be it greater or less than the price of the sale; the expenses of the contract, if the vendee has paid them; and the damages and interests, and ornamental expenses, if the sale was made in bad faith.

APPEARANCES OF COUNSEL

Teresita Gandionco Oledan for Bignay Ex-Im Phils., Inc.

Fe Becina-Macalino & Associates for Union Bank of the Phils.

D E C I S I O N

DEL CASTILLO, *J.*:

The gross negligence of the seller in defending its title to the property subject matter of the sale – thereby contravening the express undertaking under the deed of sale to protect its title against the claims of third persons resulting in the buyer's eviction from the property – amounts to bad faith, and the buyer is entitled to the remedies afforded under Article 1555 of the Civil Code.

Before us are consolidated Petitions for Review on *Certiorari*[1] assailing the August 25, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 67788 as well as its February 10, 2006 Resolution[3] denying the parties' respective motions for reconsideration.

Factual Antecedents

In 1984, Alfonso de Leon (Alfonso) mortgaged in favor of Union Bank of the Philippines (Union Bank) real property situated at Esteban Abada, Loyola Heights, Quezon City, which was registered in his and his wife Rosario's name and covered by Transfer Certificate of Title (TCT) No. 286130 (TCT 286130).

The property was foreclosed and sold at auction to Union Bank. After the redemption period expired, the bank consolidated its ownership, whereupon TCT 362405 was issued in its name in 1987.

In 1988, Rosario filed against Alfonso and Union Bank, Civil Case No. Q-52702 for annulment of the 1984 mortgage, claiming that Alfonso mortgaged the property without her consent, and for reconveyance.

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[1] *Rollo*, G.R. No. 171590, pp. 9-32; G.R. No. 171598, pp. 66-84.

[2] CA *rollo*, pp. 219-235; penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Martin S. Villarama, Jr. and Bienvenido L. Reyes (now Members of this Court).

[3] *Id.* at 286-288.

In a September 6, 1989 Letter-Proposal,[4] Bignay Ex-Im Philippines, Inc. (Bignay), through its President, Milagros Ong Siy (Siy), offered to purchase the property. The written offer stated, among others, that –

> The property is the subject of a pending litigation between Rosario de Leon and Union Bank for nullification of the foreclosure before the Regional Trial Court of Quezon City. Should this offer be approved by your management, we suggest that instead of the usual conditional sale, a deed of absolute sale be executed to document the transaction in our favor subject to a mortgage in favor of the bank to secure the balance.
>
> This documentation is intended to isolate the property from any lis pendens that the former owner may annotate on the title and to allow immediate reconstitution thereof since the original Torrens title was burned in 1988 when the City Hall housing the Register of Deeds of Quezon City was gutted by fire.[5]

On December 20, 1989, a Deed of Absolute Sale[6] was executed by and between Union Bank and Bignay whereby the property was conveyed to Bignay for ₱4 million. The deed of sale was executed by the parties through Bignay's Siy and Union Bank's Senior Vice President Anthony Robles (Robles). One of the terms of the deed of sale is quoted below:

> Section 1. The VENDEE hereby recognizes that the Parcel/s of Land with improvements thereon is acquired through foreclosure proceedings and agrees to buy the Parcel/s of Land with improvement[s] thereon in its present state and condition. The VENDOR therefore does not make any x x x representations or warranty with respect to the Parcel/s of Land but that it will defend its title to the Parcel/s of Land with improvement[s] thereon against the claims of any person whomsoever.[7]

On December 27, 1989, Bignay mortgaged the property to Union Bank, presumably to secure a loan obtained from the latter.

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[4] Records, Vol. I, p. 232.

[5] *Id.*

[6] *Id.* at 15-17.

[7] *Id.* at 15.

On December 12, 1991, a Decision[8] was rendered in Civil Case No. Q-52702, decreeing as follows:

WHEREFORE, premises above considered, finding that defendant Alfonso de Leon, Jr. had alone executed the mortgage (Exh. 7) on their conjugal property with T.C.T. No. 286130 (Exh. L) upon a forged signature (Exh. M-1) of his wife plaintiff Rosario T. de Leon, the Court hereby declares NULL and VOID the following documents:

1. Said Mortgage Contract dated April 11, 1984 (Exh. 7) executed by and between defendants Alfonso de Leon, Jr. alone and Union Bank of the Philippines;

2. Sheriff's Sale dated June 12, 1985 (Exh. F);

3. T.C.T. No. 362405 (Exh. O) issued in the name of defendant Union Bank on June 10, 1987 which replaced the said T.C.T. No. 286130;

4. Sale and mortgage by and between Union Bank and Bignay Ex-Im Phil. Inc. on December 27, 1989 over the subject conjugal property as annotated on T.C.T. No. 362405 (Exh. O).

Further, the Court hereby declares plaintiff Rosario T. de Leon the owner still of the undivided ONE HALF (1/2) of the subject property covered by T.C.T. No. 286130.

The order dated February 2, 1988 granting a writ of possession in favor of Union Bank is hereby SET ASIDE and QUASHED.

Defendant Alfonso de Leon, Jr. is hereby ordered to pay his co-defendant Union Bank of the Philippines the sum of his ₱1M loan with interest from the time the same was extended to him which is hereby charged against his other undivided share of ONE HALF (½) of the subject property with T.C.T. No. 286130.

No damages is [sic], however, adjudicated against defendant Union Bank of the Philippines there being no substantial evidence that it is in complicity with defendant Alfonso de Leon, Jr. in the presentation of the forged signature of his wife plaintiff on the Special Power of Attorney (Exh. M).

Without cost, except for the professional fee, if any, for the examination of the forged signature (Exh. M-1) which shall be paid

[8] *Id.* at 35-45; penned by Judge Pedro T. Santiago.

by defendant Alfonso de Leon, Jr.

SO ORDERED.[9]

Union Bank appealed the above Decision with the CA. It likewise sought a new trial of the case, which the trial court denied. The CA appeal was dismissed for failure to file appellant's brief; the ensuing Petition for Review with this Court was similarly denied for late filing and payment of legal fees.[10]

Union Bank next filed with the CA an action to annul the trial court's December 12, 1991 judgment.[11] In a September 9, 1993 Resolution, however, the CA again dismissed the Petition[12] for failure to comply with Supreme Court Circular No. 28-91.[13] The bank's Motion for Reconsideration was once more denied.[14]

This time, Bignay filed a Petition for annulment of the December 12, 1991 Decision, docketed as CA-G.R. SP No. 33901. In a July 15, 1994 Decision,[15] the CA dismissed the Petition. Bignay's resultant Petition for *Certiorari* with this Court suffered the same fate.[16]

Meanwhile, as a result of the December 12, 1991 Decision in Civil Case No. Q-52702, Bignay was evicted from the property; by then, it had demolished the existing structure on the lot and begun construction of a new building.

Ruling of the Regional Trial Court

On March 21, 1994, Bignay filed Civil Case No. 94-1129 for breach of warranty against eviction under Articles 1547 and

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

[10] *Rollo*, G.R. No. 171590, pp. 37-38.

[11] Docketed as CA-G.R. SP No. 31689.

[12] *Rollo*, G.R. No. 171590, p. 38.

[13] Additional Requisites For Petitions Filed With The Supreme Court And The Court Of Appeals To Prevent Forum Shopping Or Multiple Filing Of Petitions And Complaints.

[14] *Rollo*, G.R. No. 171590, p. 38; Records, Vol. II, pp. 371-376.

[15] Records, Vol. 1, pp. 243-252.

[16] *Rollo*, G.R. No. 171590, pp. 38-39.

1548 of the Civil Code, with damages, against Union Bank and Robles. The case was assigned to Branch 141 of the Makati Regional Trial Court (RTC). Bignay alleged in its Complaint[17] that at the time of the sale, the title to the property was lost due to fire at the Register of Deeds; that at the time of the sale, Union Bank represented that there were no liens or encumbrances over the property other than those annotated on the title, and that a reconstitution of the lost title would be made; that on these assurances, Bignay began and completed construction of a building on the property; that it turned out that the property was the subject of a case by Rosario, and Bignay began to receive copies of court orders and pleadings relative to the case; that it issued a demand to Union Bank for the latter to make good on its warranties; that despite such demands, it appeared that Bignay was in jeopardy of losing the property as a result of Union Bank's lack of candor and bad faith in not disclosing the pending case. Bignay prayed to be awarded the following:

1. ₱54,000,000.00 as actual damages;

2. ₱2,000,000.00 as exemplary damages;

3. ₱1,000,000.00 by way of attorney's fees; and

4. Costs of suit.

In a March 10, 1995 Order[18] of the trial court, Robles was dropped as party defendant upon agreement of the parties and in view of Union Bank's admission and confirmation that it had authorized all of Robles's acts relative to the sale.

Union Bank interposed a Motion to Dismiss[19] grounded on lack of or failure to state a cause of action, claiming that it made no warranties in favor of Bignay when it sold the property to the latter on December 20, 1989. The trial court deferred the resolution of the motion on finding that the ground relied

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[17] Records, Vol. I, pp. 1-14.

[18] *Id.* at 108.

[19] *Id.* at 25-31.

upon did not appear to be indubitable. Union Bank thus filed its Answer *Ad Cautelam*,[20] where it alleged that Bignay was not an innocent purchaser for value, knowing the condition of the property as evidenced by Siy's September 6, 1989 letter-proposal to purchase the same. It interposed a counterclaim as well, grounded on two promissory notes signed by Siy in favor of the bank – 1) Promissory Note No. 90-1446 dated December 20, 1990 for the amount of ₱1.5 million payable on demand with annual interest of 33%, and 2) Promissory Note No. 91-0286 dated February 26, 1991 for the amount of ₱2 million payable on demand with annual interest of 30% – which resulted in outstanding liabilities, inclusive of interest and penalties, in the total amount of more than ₱10.4 million as of December 20, 1996.

During trial, Siy testified that she was a client of Union Bank, and that she was a regular buyer of some of the bank's acquired assets. She admitted that she maintained a close business relationship with Robles, who would identify cheap bank properties for her and then facilitate or assist her in the acquisition thereof. To do this, she claimed that she signed papers in blank and left them with Robles, who would then use the same in preparing the necessary documents, such as the supposed September 6, 1989 letter-proposal, which Siy claimed she knew nothing about.[21]

Siy further testified that for his services, Robles was given a 3% commission each time she obtained a loan from Union Bank. Moreover, she claimed that she gifted Robles with shares of stock in one of her corporations, International General Auto Parts Corporation (IGAPC), and made him an incorporator and director thereof.[22]

Finally, Siy testified that the existing structure on the subject property was demolished and a new one was constructed at a cost of ₱20 million. From the new structure, Bignay earned

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[20] *Id.* at 84-91.

[21] *Rollo*, G.R. No. 171590, p. 57.

[22] *Id.* at 57-58.

monthly rental income of ₱60,000.00, until the lessee was evicted on account of the execution of the Decision in Civil Case No. Q-52702.[23]

On the other hand, Robles – testifying for Union Bank – denied that he prepared the September 6, 1989 letter-proposal. He added that Siy was apprised of the then pending Civil Case No. Q-52702. He also admitted that Siy gave him shares of stock in IGAPC and made him an incorporator and director thereof.[24]

Evidence on Union Bank's counterclaim was likewise received by the trial court.

On March 21, 2000, the trial court rendered its Decision[25] in Civil Case No. 94-1129, which decreed thus:

> WHEREFORE, decision is hereby rendered ordering the defendant to pay plaintiff the sum of Four Million (₱4,000,000.00) Pesos representing the cost of the land and Twenty Million (₱20,000,000.00) Pesos representing the value of the building constructed on the subject land, and the costs of this suit.
>
> The counterclaim interposed by defendant is hereby dismissed without prejudice.
>
> SO ORDERED.[26]

The trial court found that Union Bank's Senior Vice President, Robles, maintained a secret alliance and relationship of trust with Bignay's Siy, whereby Robles would look out for desirable properties from the bank's asset inventory, recommend them to Siy, then facilitate the negotiation, sale and documentation for her. In return, he would receive a 3% commission from Siy, or some other benefit; in fact, Siy made him an incorporator and director of one of her corporations, IGAPC. The trial court believed Siy's claim that she signed papers in blank and

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[23] *Id.* at 58.

[24] *Id.*

[25] Records, Vol. II, pp. 492-502; penned by Judge Manuel D. Victorio.

[26] *Id.* at 502.

left them with Robles in order to facilitate the negotiation and purchase of bank properties which they both considered to be cheap and viable. In this connection, the trial court concluded that it was Robles – and not Siy – who prepared the September 6, 1989 letter-proposal on a piece of paper signed in blank by Siy, and that even though the pending Civil Case No. Q-52702 was mentioned in the letter-proposal, Siy in fact had no knowledge thereof. This is proved by the fact that she proceeded to construct a costly building on the property; if Siy knew of the pending Civil Case No. Q-52702, it is highly doubtful that she would do so.

The trial court thus declared that Union Bank, through Robles, acted in bad faith in selling the subject property to Bignay; for this reason, the stipulation in the December 20, 1989 deed of sale limiting Union Bank's liability in case of eviction cannot apply, because under Article 1553 of the Civil Code, "[a]ny stipulation exempting the vendor from the obligation to answer for eviction shall be void, if he acted in bad faith." Moreover, it held that in its handling of Civil Case No. Q-52702, the bank was guilty of gross negligence amounting to bad faith, which thus contravened its undertaking in the deed of sale to "defend its title to the Parcel/s of Land with improvement thereon against the claims of any person whatsoever."

In resolving the controversy, the trial court applied Article 1555 of the Civil Code, which provides thus:

> Art. 1555. When the warranty has been agreed upon or nothing has been stipulated on this point, in case eviction occurs, the vendee shall have the right to demand of the vendor:
>
> (1) The return of the value which the thing sold had at the time of the eviction, be it greater or less than the price of the sale;
>
> (2) The income or fruits, if he has been ordered to deliver them to the party who won the suit against him;
>
> (3) The costs of the suit which caused the eviction, and, in a proper case, those of the suit brought against the vendor for the warranty;
>
> (4) The expenses of the contract, if the vendee has paid them;

(5) The damages and interests, and ornamental expenses, if the sale was made in bad faith.

Thus, it held that Bignay was entitled to the return of the value of the property (₱4 million), as well as the cost of the building erected thereon (₱20 million), since Union Bank acted in bad faith. At the same time, the trial court held that the bank's counterclaim was not at all connected with Bignay's Complaint, which makes it a permissive counterclaim for which the docket fees should accordingly be paid. Since the bank did not pay the docket fees, the trial court held that it did not acquire jurisdiction over its counterclaim; thus, it dismissed the same.

Ruling of the Court of Appeals

Union Bank took the trial court's March 21, 2000 Decision to the CA on appeal. On August 25, 2005, the CA issued the assailed Decision, decreeing as follows:

> WHEREFORE, the instant Appeal is PARTLY GRANTED. Judgment is hereby rendered ordering defendant-appellant to pay plaintiff-appellee the sum of ₱4,000,000.00 representing the cost of the land and ₱20,000,000.00 representing the value of the building constructed on the subject land.
>
> On the Counterclaim, judgment is rendered ordering plaintiff-appellee to pay defendant-appellant the principal amount of ₱1,500,000.00 under Promissory Note No. 90-1446 dated December 18, 1990, plus the stipulated interests and stipulated penalty charges from date of maturity of the loan or from June 6, 1991 until its full payment and also to pay the principal amount of ₱2,000,000.00 under Promissory Note No. 90-0286 dated February 25, 1991, plus the stipulated interests and stipulated penalty charges from date of maturity of the loan or from August 26, 1991 until full payment thereof.
>
> No pronouncement as to costs.
>
> SO ORDERED.[27]

Applying Articles 1548 and 1549 of the Civil Code,[28] the CA held that Union Bank is liable pursuant to its commitment

[27] *Id.* at 49-50.

[28] Art. 1548. Eviction shall take place whenever by a final judgment

under the December 20, 1989 deed of sale to defend the title to the property against the claims of third parties. It shared the trial court's opinion that the bank was guilty of negligence in the handling and prosecution of Civil Case No. Q-52702, for which reason it should be made answerable, since it lost its title to the whole property when it could have protected its right to Alfonso's share therein considering that the Decision in Civil Case No. Q-52702 merely awarded Rosario's conjugal share. In other words, the CA intimated that if Union Bank exercised prudence, it could have maintained at least its rights and title to Alfonso's one-half share in the property, and the trial court's Decision completely nullifying the Alfonso-Union Bank mortgage, the bank's new title TCT 362405, and the Union Bank-Bignay sale could have been avoided.

The CA added that the declaration contained in the September 6, 1989 letter-proposal to the effect that Siy knew about the pending Civil Case No. Q-52702 cannot bind Bignay because the proposal was supposedly prepared and signed by Siy in her personal capacity, and not for and in behalf of Bignay. It further affirmed the trial court's view that it was Robles – and not Siy – who prepared the said letter-proposal on a piece of paper which she signed in blank and left with Robles to facilitate her transactions with Union Bank.

Regarding the bank's counterclaim, the CA held that Union Bank timely paid the docket fees therefor – amounting to ₱32,940.00 – at the time it filed its Answer *Ad Cautelam* on November 4, 1994, as shown by Official Receipt Nos. 4272579 and 4271965 to such effect and the rubberstamped mark on the face of the answer itself. It added that since the trial court

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based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or of a part of the thing purchased.

The vendor shall answer for the eviction even though nothing has been said in the contract on the subject.

The contracting parties, however, may increase, diminish, or suppress this legal obligation of the vendor.

Art. 1549. The vendee need not appeal from the decision in order that the vendor may become liable for eviction.

received the bank's evidence on the counterclaim during trial, it should have made a ruling thereon.

Bignay filed its Motion for Partial Reconsideration[29] questioning the appellate court's ruling on Union Bank's counterclaim. On the other hand, Union Bank in its Motion for Reconsideration[30] took exception to the CA's application of Articles 1548 and 1549 of the Civil Code, as well as its finding that the bank was negligent in the handling and prosecution of Civil Case No. Q-52702.

On February 10, 2006, the CA issued the second assailed Resolution denying the parties' respective motions for reconsideration.

Thus, the present Petitions were filed. G.R. No. 171590 was initiated by Bignay, while G.R. No. 171598 was filed by Union Bank. In a June 21, 2006 Resolution[31] of the Court, both Petitions were ordered consolidated.

Issues

The following issues are raised:

By Bignay as petitioner in G.R. No. 171590

1. IN A PERMISSIVE COUNTERCLAIM, WHEN SHOULD THE DOCKET FEES BE PAID TO ENABLE THE TRIAL COURT TO ACQUIRE JURISDICTION OVER THE CASE?

2. IN THE EVENT OF NON-PAYMENT OF DOCKET FEES FOR PERMISSIVE COUNTERCLAIMS, CAN THE COURT DISMISS THE SAID COUNTERCLAIMS?[32]

By Union Bank as petitioner in G.R. No. 171598

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[29] CA *rollo*, pp. 254-268.

[30] *Id.* at 240-251.

[31] *Rollo*, G.R. No. 171590, p. 69.

[32] *Id.* at 21.

The portion of the [D]ecision of the Honorable Court of Appeals dated August 25, 2005 ordering petitioner to pay private respondent the total amount of ₱24.0 million should be set aside for it has altogether ignored:

I. THE TESTIMONY OF ROBLES;

II. THAT THE LETTER-PROPOSAL DATED SEPTEMBER 6, 1989 WAS SIGNED BY SIY IN BEHALF OF (BIGNAY);

III. THE FACT THAT THE APPLICATION OF ARTS. 1548 AND 1549 OF THE CIVIL CODE WAS PATENTLY ERRONEOUS.[33]

The Parties' Respective Arguments

G.R. No. 171590. As petitioner in G.R. No. 171590, Bignay registers its doubts as to whether Union Bank indeed paid the docket fees on its permissive counterclaim, arguing that if the bank indeed paid the docket fees, the trial court would have so held in its March 21, 2000 Decision; instead, it specifically declared therein that the docket fees on the counterclaim remained unpaid at that point in time. In other words, Bignay appears to insinuate that there was an irregularity surrounding the bank's alleged payment of the docket fees on its counterclaim. It adds that since Union Bank is guilty of negligence and bad faith in transacting with Bignay, it should be penalized through the proper dismissal of its counterclaim; the Court should instead require Union Bank to prosecute its claims in a separate action.

In the alternative, Bignay claims that the amount of ₱1,039,457.33 should be deducted from its adjudged liabilities to Union Bank, as it has been proven during trial that it paid such amount to the bank, as shown by receipts duly marked and offered in evidence as Exhibits "H" to "H-6".

Bignay thus prays in its Petition that the assailed dispositions of the CA be modified to the extent that Union Bank's counterclaim should be denied and dismissed.

In its Comment[34] praying that the CA's ruling on its counterclaim be affirmed, Union Bank insists that it timely paid

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[33] *Rollo*, G.R. No. 171598, pp. 74-75.

[34] *Id.* at 132-139.

the docket fees on its counterclaim, arguing that the official receipts proving payment as well as the rubber stamp-mark on the face of its answer may not be overturned by Bignay's baseless suspicions, claims and insinuations not supported by controverting evidence or proof. It adds that, contrary to Bignay's assertion, a separate case for the prosecution of its counterclaim is unnecessary since the same may sufficiently be tried in Civil Case No. 94-1129 precisely as a permissive counterclaim; and by allowing its permissive counterclaim, multiplicity of suits is avoided.

In a Reply[35] to the bank's Comment, Bignay among others vehemently insists that at the time of the rendition of the trial court's judgment in Civil Case No. 94-1129, Union Bank had not yet paid the docket fees on its counterclaim; the bank's claim that it paid the docket fees when it filed its Answer *Ad Cautelam* is absolutely questionable. If indeed the bank paid the docket fees, then it should have questioned the trial court's dismissal of its counterclaim in a motion for reconsideration and attached the receipts showing its payment of the fees; yet it did not. Besides, if indeed the fact of payment of docket fees was stamped on the face of the bank's Answer *Ad Cautelam* when it filed the same, the trial court should have noticed it, or at least its attention would have been directed to the fact; but it was not. And if indeed the docket fees were paid as early as 1994, it is incredible how Union Bank never informed the trial court of its payment, even after the adverse Decision in the case was rendered. Bignay adds that in a September 12, 2005 letter[36] to the Clerk of Court of the Makati City RTC, its counsel inquired into the circumstances surrounding the sudden appearance of official receipts – copies of which were attached to the letter – indicating that Union Bank paid the docket fees on its permissive counterclaim, when it appears that no such payment was in fact made; up to now, however, it has not received any reply from the said office.

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[35] *Id.* at 153-165.

[36] *Id.* at 166.

G.R. No. 171598. In its Petition in G.R. No. 171598, Union Bank insists that the September 6, 1989 letter-proposal effectively limited its liability for eviction since from said letter it is seen that Bignay knew beforehand of the pendency of Civil Case No. Q-52702. It insists that under the December 20, 1989 deed of sale, it did not make any representations or warranty with respect to the property; thus, the application of Articles 1548 and 1549 of the Civil Code by the CA was erroneous. Thus, the bank seeks a partial reversal of the CA's disposition – particularly the portion of the Decision which holds it liable to pay Bignay the respective sums of ₱4 million for the cost of the land, and ₱20 million for the cost of the building.

In its Comment,[37] Bignay claims that in urging the Court to consider the testimony of Robles and Siy's declaration in the September 6, 1989 letter-proposal, Union Bank is raising questions of fact in its Petition which this Court may not resolve. It likewise reiterates its argument relating to the bank's counterclaim; only this time, Bignay claims that the official receipts evidencing the bank's supposed payment of the docket fees were falsified.

Our Ruling

The Court finds for Bignay.

Indeed, this Court is convinced – from an examination of the evidence and by the concurring opinions of the courts below – that Bignay purchased the property without knowledge of the pending Civil Case No. Q-52702. Union Bank is therefore answerable for its express undertaking under the December 20, 1989 deed of sale to "defend its title to the Parcel/s of Land with improvement thereon against the claims of any person whatsoever." By this warranty, Union Bank represented to Bignay that it had title to the property, and by assuming the obligation to defend such title, it promised to do so at least in good faith and with sufficient prudence, if not to the best of its abilities.

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[37] *Id.* at 172-184.

The record reveals, however, that Union Bank was grossly negligent in the handling and prosecution of Civil Case No. Q-52702. Its appeal of the December 12, 1991 Decision in said case was dismissed by the CA for failure to file the required appellant's brief. Next, the ensuing Petition for Review on *Certiorari* filed with this Court was likewise denied due to late filing and payment of legal fees. Finally, the bank sought the annulment of the December 12, 1991 judgment, yet again, the CA dismissed the petition for its failure to comply with Supreme Court Circular No. 28-91. As a result, the December 12, 1991 Decision became final and executory, and Bignay was evicted from the property. Such negligence in the handling of the case is far from coincidental; it is decidedly glaring, and amounts to bad faith. "[N]egligence may be occasionally so gross as to amount to malice [or bad faith]."[38] Indeed, in *culpa contractual* or breach of contract, gross negligence of a party amounting to bad faith is a ground for the recovery of damages by the injured party.[39]

Eviction shall take place whenever by a final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or of a part of the thing purchased.[40] In case eviction occurs, the vendee shall have the right to demand of the vendor, among others, the return of the value which the thing sold had at the time of the eviction, be it greater or less than the price of the sale; the expenses of the contract, if the vendee has paid them; and the damages and interests, and ornamental expenses, if the sale was made in bad faith.[41] There appears to be no dispute as to the value of the building constructed on the property by Bignay; the only issue raised by Union Bank in these Petitions is the propriety of the award of damages, and the amount thereof is not in

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[38] *Bankard, Inc. v. Dr. Feliciano*, 529 Phil. 53, 61 (2006), citing *Fores v. Miranda*, 105 Phil. 266, 276 (1959).

[39] *Cagungun v. Planters Development Bank*, 510 Phil. 51, 63 (2005).

[40] CIVIL CODE, Art. 1548.

[41] CIVIL CODE, Art. 1555.

issue. The award in favor of Bignay of ₱4 million, or the consideration or cost of the property, and ₱20 million – the value of the building it erected thereon – is no longer in issue and is thus in order.

However, the Court disagrees with the CA on the issue of Union Bank's counterclaim. Bignay correctly observes that if the bank indeed paid the docket fees therefor, the trial court would have so held in its March 21, 2000 Decision; yet in its judgment, the trial court specifically declared that the docket fees remained unpaid at the time of its writing, thus –

> Anent the counterclaims interposed by defendant for the collection of certain sum of money adverted earlier hereof [sic], this Court could not exercise jurisdiction over the same as defendant did not pay the docket fees therefor. Although the counterclaims were denominated as compulsory in the answer, the matters therein alleged were not connected with the plaintiff's complaint. The counterclaims could stand independently from the plaintiff's complaint hence they are a [sic] permissive counterclaims. During the pre-trial, this Court had already ruled that the counterclaims were permissive yet the records showed that defendant had not paid the docket fees. This Court therefore has not acquired jurisdiction over said case.[42]

And if it is true that the bank paid the docket fees on its counterclaim as early as in 1994, it would have vigorously insisted on such fact after being apprised of the trial court's March 21, 2000 Decision. It is indeed surprising that the supposed payment was never raised by the bank in a timely motion for reconsideration, considering that the trial court dismissed its counterclaim; if there is any opportune time to direct the court's attention to such payment and cause the counterclaim to be reinstated, it was at that point and no other. All it had to do was prove payment by presenting to the court the official receipts or any other acceptable documentary evidence, and thus secure the proper reversal of the ruling on its counterclaim. Still, nothing was heard from the bank on the issue, until it filed its brief with the CA on appeal. Indeed, "whatever is repugnant to the

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[42] Records, Vol. II, p. 501.

standards of human knowledge, observation and experience becomes incredible and must lie outside judicial cognizance."[43]

More than the above, this Court finds true and credible the trial court's express declaration that no docket fees have been paid on the bank's counterclaim; the trial court's pronouncement enjoys the presumption of regularity. Indeed, the sudden appearance of the receipts supposedly evidencing payment of the docket fees is highly questionable and irregular, and deserves to be thoroughly investigated; the actuations of the bank relative thereto go against the common experience of mankind, if they are not entirely anomalous.

WHEREFORE, the Court resolves as follows:

1. The Petition in G.R. No. 171590 is **GRANTED**. The August 25, 2005 Decision and February 10, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 67788 are **MODIFIED**, in that Union Bank of the Philippines's counterclaim is ordered **DISMISSED**.

2. The Petition in G.R. No. 171598 is **DENIED**.

SO ORDERED.

Carpio (Chairperson), Brion, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[43] *People v. De Guzman*, G.R. No. 192250, July 11, 2012, 676 SCRA 347, 360.

FIRST DIVISION

[G.R. No. 174564. February 12, 2014]

ATTY. EMMANUEL D. AGUSTIN, JOSEPHINE SOLANO, ADELAIDA FERNANDEZ, ALEJANDRO YUAN, JOCELYN LAVARES, MARY JANE OLASO, MELANIE BRIONES, ROWENA PATRON, MA. LUISA CRUZ, SUSAN TAPALES, RUSTY BAUTISTA, and JANET YUAN, *petitioners, vs.* **ALEJANDRO CRUZ-HERRERA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; CERTIFICATION AGAINST FORUM SHOPPING MUST BE SIGNED BY THE PRINCIPAL PARTIES THEMSELVES AND NOT BY THE ATTORNEY.—** It has been repeatedly emphasized that in the case of natural persons, the certification against forum shopping must be signed by the principal parties themselves and not by the attorney. The purpose of the rule rests mainly on practical sensibility. As explained in *Clavecilla v. Quitain*: x x x [T]he certification (against forum shopping) must be signed by the plaintiff or any of the principal parties and not by the attorney. For such certification is a peculiar personal representation on the part of the principal party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action. x x x Obviously it is the petitioner, and not always the counsel whose professional services have been retained for a particular case, who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case. Hence, a certification against forum shopping by counsel is a defective certification.

2. **LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP IS ONE OF AGENCY; THE ACTS OF THE LAWYER ARE DEEMED ACTS OF THE PARTIES REPRESENTED ONLY IF THE LAWYER ACTS WITHIN THE SCOPE OF HIS AUTHORITY.—** [T]he complainants did not seek the instant review because they have already settled their dispute with

Herrera before the CA. It is Atty. Agustin's personal resolve to pursue this recourse premised on his unwavering stance that the joint compromise agreement signed by the complainants was inequitable and devious as they were denied the bigger monetary award adjudged by a final and executory judgment. Atty. Agustin ought to be reminded that his professional relation with his clients is one of agency under the rules thereof "[t]he acts of an agent are deemed the acts of the principal only if the agent acts within the scope of his authority." It is clear that under the circumstances of this case, Atty. Agustin is acting beyond the scope of his authority in questioning the compromise agreement between the complainants, Podden and Herrera.

3. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTIES MAY ENTER INTO A COMPROMISE AGREEMENT WITHOUT THE INTERVENTION OF THEIR LAWYER AND EVEN IF THERE IS ALREADY A FINAL JUDGMENT.— It is settled that parties may enter into a compromise agreement without the intervention of their lawyer. This precedes from the equally settled rule that a client has an undoubted right to settle a suit without the intervention of his lawyer for he is generally conceded to have the exclusive control over the subject-matter of the litigation and may, at any time before judgment, if acting in good faith, compromise, settle, and adjust his cause of action out of court without his attorney's intervention, knowledge, or consent, even though he has agreed with his attorney not to do so. Hence, the absence of a counsel's knowledge or consent does not invalidate a compromise agreement. Neither can a final judgment preclude a client from entering into a compromise. Rights may be waived through a compromise agreement, notwithstanding a final judgment that has already settled the rights of the contracting parties provided the compromise is shown to have been voluntarily, freely and intelligently executed by the parties, who had full knowledge of the judgment. Additionally, it must not be contrary to law, morals, good customs and public policy.

4. ID.; ID.; ID.; ID.; LAWYER SHOULD NOT BE TOTALLY DEPRIVED OF HIS COMPENSATION BECAUSE OF THE COMPROMISE SUBSCRIBED BY THE CLIENT; CASE AT BAR.— There is truth to Atty. Agustin's argument that the compromise agreement did not include or affect his attorney's

fees granted in the final and executory LA Decision dated September 27, 1998. Attorney's fees become vested right when the order awarding those fees becomes final and executory and any compromise agreement removing that right must include the lawyer's participation if it is to be valid against him. However, equity dictates that an exception to such rule be made in this case with the end in view that the fair share of litigants to the benefits of a suit be not displaced by a contract for legal services. It must be noted that the complainants were laborers who desired to contest their dismissal for being illegal. With no clear means to pay for costly legal services, they hired Atty. Agustin whose remuneration was subject to the success of the illegal dismissal suit. Before a judgment was rendered in their favor, however, the company closed down and settlement of the suit for an amount lesser than their monetary claims, instead of execution of the favorable judgment, guaranteed the atonement for their illegal termination. To make the complainants liable for the ₱335,844.18 attorney's fees adjudged in the LA Decision of September 27, 1998 would be allowing Atty. Agustin to get a lion's share of the ₱385,000.00 received by the former from the compromise agreement that terminated the suit; to allow that to happen will contravene the *raison d'être* for contingent fee arrangements. x x x Atty. Agustin was not totally deprived of his fees. Under the joint settlement agreement, he is entitled to receive ten percent (10%) of the total settlement. We find the said amount reasonable considering that the nature of the case did not involve complicated legal issues requiring much time, skill and effort.

5. LEGAL ETHICS; LAWYERS; CONTINGENT FEE ARRANGEMENTS ON DEFENDING A CLIENT'S CAUSE; DISCUSSED.— Contingent fee arrangements "are permitted because they redound to the benefit of the poor client and the lawyer 'especially in cases where the client has meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for a contingent fee to be paid out of the proceeds of the litigation. Oftentimes, the contingent fee arrangement is the only means by which the poor and helpless can seek redress for injuries sustained and have their rights vindicated.'" Further, a lawyer is not merely the defender of his client's cause. He is also, first and foremost, an officer of the court and participates in the fundamental function of administering justice in society.

> It follows that a lawyer's compensation for professional services rendered is subject to the supervision of the court in order to maintain the dignity and integrity of the legal profession to which he belongs. "[L]awyering is not a moneymaking venture and lawyers are not merchants. Law advocacy, it has been stressed, is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered."

APPEARANCES OF COUNSEL

Agustin Chiong Agustin Law Office for petitioners.
Henedino M. Brondial for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] assailing the Resolution[2] dated September 30, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 85556 which approved the joint compromise agreement executed by respondent Alejandro Cruz-Herrera (Herrera) and the former employees of Podden International Philippines, Inc. (Podden), namely: Josephine Solano, Adelaida Fernandez, Alejandro Yuan, Jocelyn Lavares, Mary Jane Olaso, Melanie Briones, Rowena Patron, Ma. Luisa Cruz, Susan Tapales, Rusty Bautista, and Janet Yuan (complainants).

The Antecedents

Respondent Herrera was the President of Podden while complainants were assemblers and/or line leader assigned at the production department.[3] In 1993, the complainants were terminated from employment due to financial reverses. Upon verification,

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[1] *Rollo*, pp. 13-36.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Jose C. Mendoza (now a Member of this Court) and Arturo G. Tayag (retired), concurring; *id.* at 37-39.

[3] Complainant Josephine Solano was a line leader while the rest of the other complainants were assemblers; *id.* at 44.

however, with the Department of Labor and Employment, no such report of financial reverses or even retrenchment was filed. This prompted the complainants to file a complaint for illegal dismissal, monetary claims and damages against Podden and Herrera.[4] They engaged the services of Atty. Emmanuel D. Agustin (Atty. Agustin) to handle the case[5] upon the verbal agreement that he will be paid on a contingency basis at the rate of ten percent (10%) of the final monetary award or such amount of attorney's fees that will be finally determined.

Proceedings before the Labor Arbiter

The complainants, thru Atty. Agustin, obtained a favorable ruling before the Labor Arbiter (LA) who disposed as follows in its Decision[6] dated September 27, 1998, to wit:

> WHEREFORE, premises considered, [Podden and Herrera] are hereby directed/ordered to immediately reinstate the complainants to their former positions without loss of seniority rights and other privileges with full backwages from date of dismissal up to actual date of reinstatement which as of this month is more or less in the amount as follows:

COMPLAINANT	AMOUNT
	[₱]238,680.00=([₱]135.00/day x 26 days = [₱]3,510/mo. x 68 mos.)
1. JOSEPHINE SOLANO	[₱]238,680.00
2. ADELAIDA FERNANDEZ	[₱]238,680.00
3. ALEJANDRO YUAN	[₱]238,680.00
4. JOCELYN LAVARES	[₱]238,680.00
5. MARY JANE OLASO	[₱]238,680.00
6. MELANIE BRIONES	[₱]238,680.00
7. ROWENA PATRON	[₱]238,680.00
8. MA. LUISA CRUZ	[₱]238,680.00
9. SUSAN TAPALES	[₱]238,680.00
10. RUSTY BAUTISTA	[₱]238,680.00
11. JANET YUAN	[₱]238,680.00
TOTAL	[₱]2,625,480.00

[4] *Id.* at 44-46.

[5] *Id.* at 54.

[6] Issued by LA Aliman D. Mangandog; *id.* at 43-53.

[Podden and Herrera] are further ordered to pay complainants their money claims representing their underpayment of wages, 13th month pay, premium pay for holidays and rest days and service incentive leave pay to be computed by the Fiscal Examiner of the Research, Information and Computation Unit of the Commission in due time.

[Podden and Herrera] are furthermore ordered to pay each complainant the amount of [₱]40,000.00 as moral and exemplary damages, as well as ten (10%) of the total awards as attorney's fee.

SO ORDERED.[7]

No appeal was taken from the foregoing judgment hence, on February 2, 1999, a motion for execution was filed. The motion was set for a hearing on February 10, 1999 but was reset twice upon the parties' request for the purpose of exploring the possibility of settlement.[8]

On March 20, 1999, Herrera filed a Manifestation and Motion to deny issuance of the writ stating, among others, that Podden ceased operations on December 1, 1994 or almost four years before judgment was rendered by the LA on the illegal dismissal complaint and that nine of the eleven employees have executed Waivers and Quitclaims rendering any execution of the judgment inequitable.[9]

On July 20, 1999, the Computation and Examination Unit of the National Labor Relations Commission (NLRC) released the computation of the total monetary award granted by the LA amounting to ₱3,358,441.84.[10]

Atty. Agustin opposed Herrera's motion and argued that the issuance of a writ of execution is ministerial because the LA decision has long been final and executory there being no appeal taken therefrom. He further claimed that the alleged

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

[8] *Id.* at 56-57.

[9] *Id.* at 57-58.

[10] *Id.* at 42.

Waivers and Quitclaims were part of a scheme adopted by Podden to evade its liability and defraud the complainants.[11]

Resolving the conflict, the LA issued its Order[12] dated May 15, 2000 denying the motion for the issuance of a writ of execution. The LA sustained as valid the Waivers and Quitclaims signed by all and not just nine of the complainants, based on the following findings:

> A cursory examination of the records reveal[s] that complainants, all eleven (11) of them, had indeed executed their respective waiver and quitclaim thru an instrument entitled "Pagtalikod sa Karapatang Maghabol" absolving [Podden and Herrera] from any and all liabilities that may arise against the latter to these cases. The instruments were signed by the complainants and sworn to before Notary Public Amparo G. Ocampo. Considering the fact that the complainants, through their common counsel, received a copy of the Decision in these cases on December 28, 1998, it could only be supposed that as of that date they signed the instrument of waiver and quitclaim on March 2, 1999, April 8, 1999 and March 31, 2000, they were already properly apprised about the decision having been issued in their favor, more particularly the contents thereof, by their esteemed counsel. The fact that complainants would execute such waiver and quitclaim, notwithstanding, only shows the spontaneity and voluntariness of their deed.
>
> Moreover, and as the instrument of waiver and quitclaim would show, the letter was written in the vernacular of Filipino language. Complainants who are all presumed to be knowledgeable about the national language could not have been misled with respect to the real meaning and plain import of the words used in the instrument. That complainants meant and understood what they signed in the instrument is best shown by the fact that in the subsequent hearings scheduled to take up the motion for writ of execution and the opposition thereto (considering the relative importance of the matters raised and substantial awards to the complainants)[,] complainants have failed to show up in any of them.[13]

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[11] *Id.* at 58-60.

[12] *Id.* at 55-65.

[13] *Id.* at 63-64.

Accordingly, the quitclaims were held to have superseded the matter of issuing a writ of execution. Anent Atty. Agustin's fees, the LA held that he is entitled to ten percent (10%) of the total monetary award obtained by the complainants from the compromise agreement. The order disposed thus:

> WHEREFORE, premises considered, the motion for writ of execution is denied on [the] ground that complainants have already settled their cases with [Podden and Herrera].
>
> On account of the settlement, however, [Podden and Herrera] are hereby ordered to pay complainants' counsel ten (10%) percent of the amount received by complainants as attorney's fees.
>
> SO ORDERED.[14]

Ruling of the NLRC

On appeal, the NLRC reversed the LA Order dated May 15, 2000 for the reason that it unlawfully amended, altered and modified the final and executory LA Decision dated September 27, 1998. The quitclaims were also held invalid based on the unconscionably low amount received by each of the complainants thereunder which ranged between ₱10,000.000 and ₱20,000.00 as against the judgment award of ₱238,680.00 for each individual complainant. This factor was found by the NLRC to be a clear proof that the quitclaims were indeed wangled from the unsuspecting complainants. The NLRC Resolution[15] dated May 7, 2003 thus held:

> **WHEREFORE**, the appeal is **GRANTED**. The Order *a quo* of May 15, 2000 is hereby reversed and set aside and a new one entered ordering the Labor Arbiter *a quo* to immediately issue the corresponding writ of execution for the enforcement of the decision rendered in this case. The quitclaims executed by the complainants are hereby nullified. However, any amount received by the complainants under the quitclaims shall be deducted from the award due each of them.

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[14] *Id.* at 65.

[15] *Id.* at 67-72.

SO ORDERED.[16]

The NLRC reiterated the foregoing judgment in the Order[17] dated May 31, 2004 which denied Podden and Herrera's motion for reconsideration. On August 13, 2004, the NLRC issued an Entry of Judgment declaring that its Order dated May 31, 2004 has become final and executory on June 20, 2004.[18]

Ruling of the CA

On August 6, 2004, Herrera filed a petition for *certiorari* before the CA assailing the issuances of the NLRC. During the pendency of the petition or on August 30, 2005, a joint compromise agreement was submitted to the CA narrating as follows:

> WHEREAS, the parties have discussed their differences; claims, counterclaims and other issues in the above-entitled cases and have decided to amicably and mutually settle the same;
>
> WHEREAS, the parties have agreed that [Herrera] shall pay each of the [complainants] immediately upon the signing of the Joint Compromise Agreement the amount of Php 35,000.00 to each;
>
> WHEREAS, the parties have agreed that [Herrera] shall pay the costs of the suit and attorney's fees of [the complainants] equivalent to 10% (ten percent) of the total settlement agreement;
>
> WHEREAS, the parties, their heirs, and assigns, agree to have the present case dismissed WITH PREJUDICE, immediately; x x x[.][19]

In its assailed Resolution[20] dated September 30, 2005, the CA found the joint compromise agreement consistent with law, public order and public policy, and consequently stamped its approval thereon and entered judgment in accordance therewith, *viz*:

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[16] *Id.* at 71.

[17] *Id.* at 74-75.

[18] *Id.* at 76.

[19] *See* CA Resolution dated September 30, 2005, *id.* at 37-38.

[20] *Id.* at 37-39.

Finding the above terms and conditions not contrary to law, public order and public policy, the parties' prayer that the foregoing joint compromise agreement be approved and the extant case be dismissed with prejudice is **GRANTED** and the agreement **ADMITTED.** Judgment is hereby entered in accordance thereto.

Parties are enjoined to strictly comply with this judgment on compromise.

SO ORDERED.[21]

Atty. Agustin moved for the reconsideration of the foregoing resolution but his motion was denied in the CA Resolution[22] dated September 8, 2006.

Displeased, Atty. Agustin, with the complainants named as his co-petitioners, interposed the present recourse contending that the resolutions of the CA violated the principle of *res judicata* because they amended and altered the final and executory LA Decision dated September 27, 1998 and NLRC Resolution dated May 7, 2003 on the basis of an unconscionable compromise agreement that was executed without his knowledge and consent. Atty. Agustin prays that the joint compromise agreement be set aside, the LA Decision dated September 27, 1998 executed and Herrera ordered to pay him ₱335,844.18 as attorney's fees pursuant to the final and executory monetary award originally obtained by the complainants before the LA.

Our Ruling

We deny the petition.

The petition is dismissible outright for being accompanied by a defective certification of non-forum shopping having been signed by Atty. Agustin instead of the complainants as the principal parties.

It has been repeatedly emphasized that in the case of natural persons, the certification against forum shopping must be signed

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[21] *Id.* at 38.

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

by the principal parties themselves and not by the attorney.[23] The purpose of the rule rests mainly on practical sensibility. As explained in *Clavecilla v. Quitain*:[24]

> x x x [T]he certification (against forum shopping) must be signed by the plaintiff or any of the principal parties and not by the attorney. For such certification is a peculiar personal representation on the part of the principal party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action.
>
> x x x Obviously it is the petitioner, and not always the counsel whose professional services have been retained for a particular case, who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case. Hence, a certification against forum shopping by counsel is a defective certification.[25]

The Court has espoused leniency and overlooked such procedural misstep in cases bearing substantial merit complemented by the written authority or general power of attorney granted by the parties to the actual signatory.[26] However, no analogous justifiable reasons exist in the case at bar neither do the claims of Atty. Agustin merit substantial consideration to justify a relaxation of the rule.

It is apparent that the complainants did not seek the instant review because they have already settled their dispute with Herrera before the CA. It is Atty. Agustin's personal resolve to pursue this recourse premised on his unwavering stance that the joint compromise agreement signed by the complainants was inequitable and devious as they were denied the bigger monetary award adjudged by a final and executory judgment.

Atty. Agustin ought to be reminded that his professional relation with his clients is one of agency under the rules thereof "[t]he

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[23] *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company*, G.R. No. 179488, April 23, 2012, 670 SCRA 343, 350-351.

[24] 518 Phil. 53 (2006).

[25] *Id.* at 63, citing *Gutierrez v. Sec. of the Dept. of the Labor and Employment*, 488 Phil. 110, 121 (2004).

[26] *Id.* at 65.

acts of an agent are deemed the acts of the principal only if the agent acts within the scope of his authority."[27] It is clear that under the circumstances of this case, Atty. Agustin is acting beyond the scope of his authority in questioning the compromise agreement between the complainants, Podden and Herrera.

It is settled that parties may enter into a compromise agreement without the intervention of their lawyer.[28] This precedes from the equally settled rule that a client has an undoubted right to settle a suit without the intervention of his lawyer for he is generally conceded to have the exclusive control over the subject-matter of the litigation and may, at any time before judgment, if acting in good faith, compromise, settle, and adjust his cause of action out of court without his attorney's intervention, knowledge, or consent, even though he has agreed with his attorney not to do so. Hence, the absence of a counsel's knowledge or consent does not invalidate a compromise agreement.[29]

Neither can a final judgment preclude a client from entering into a compromise. Rights may be waived through a compromise agreement, notwithstanding a final judgment that has already settled the rights of the contracting parties provided the compromise is shown to have been voluntarily, freely and intelligently executed by the parties, who had full knowledge of the judgment. Additionally, it must not be contrary to law, morals, good customs and public policy.[30]

In the present case, the allegations of vitiated consent proffered by Atty. Agustin are all presumptions and suppositions that have no bearing as evidence. There is no proof that the complainants were forced, intimidated or defrauded into executing

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[27] *See J-Phil Marine, Inc. and/or Candava v. NLRC*, 583 Phil. 671, 676 (2008).

[28] *Id.*

[29] *Czarina T. Malvar v. Kraft Food Phils., Inc., and/or Bienvenido Bautista, Kraft Foods International*, G.R. No. 183952, September 9, 2013.

[30] *Magbanua v. Uy*, 497 Phil. 511, 520-522 (2005).

the quitclaims. On the contrary, the LA correctly observed that, based on the following facts, the complainants voluntarily entered into and fully understood the contents and effect of the quitclaims, *to wit*: (1) they have already received a copy and hence aware of the LA Decision dated September 27, 1998 when they signed the quitclaims on March 2, 1999, April 8, 1999 and March 31, 2000; (2) the quitclaims were written in Filipino language which is known to and understood by the complainants; (3) none of the complainants attended the hearings on the motion for execution of the LA Decision dated September 27, 1998; (4) they were consistent in their manifestations before the NLRC and the CA that they have already settled their claims against Podden and Herrera hence, their request for the termination of the appeals filed by Atty. Agustin before the said tribunals.

Furthermore, it is the complainants themselves who can impugn the consideration of the compromise as being unconscionable[31] but no such repudiation was manifested before the Court or the courts *a quo*.

The ruling in *Unicane Workers Union-CLUP v. NLRC*[32] cited by Atty. Agustin is not applicable to the facts at hand. The circumstances which led the Court to annul the quitclaim in *Unicane* are not attendant in the present case. In *Unicane*, the attorney-in-fact who signed the quitclaim in behalf of the employees exceeded the scope of his authority thus prejudicing the latter. Consequently, it was ruled that the quitclaim did not bind the employees. No akin situation exists in the case at bar.

Further, Atty. Agustin's claim for his unpaid attorney's fees cannot nullify the subject joint compromise agreement.[33]

A compromise agreement is binding only between its privies and could not affect the rights of third persons who were not parties to the agreement. One such third party is the lawyer

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[31] *Supra* note 27.

[32] 330 Phil. 291 (1996).

[33] *Supra* note 29.

who should not be totally deprived of his compensation because of the compromise subscribed by the client. Otherwise, the terms of the compromise agreement will be set aside, and the client shall be bound to pay the fees agreed upon with his lawyer. If the adverse party settled the suit in bad faith, he will be made solidarily liable with the client for the payment of such fees. The following discussions in *Gubat v. National Power Corporation*[34] elaborate on this matter, *viz*:

> As the validity of a compromise agreement cannot be prejudiced, so should not be the payment of a lawyer's adequate and reasonable compensation for his services should the suit end by reason of the settlement. The terms of the compromise subscribed to by the client should not be such that will amount to an entire deprivation of his lawyer's fees, especially when the contract is on a contingent fee basis. In this sense, the compromise settlement cannot bind the lawyer as a third party. A lawyer is as much entitled to judicial protection against injustice or imposition of fraud on the part of his client as the client is against abuse on the part of his counsel. The duty of the court is not only to ensure that a lawyer acts in a proper and lawful manner, but also to see to it that a lawyer is paid his just fees.

Even if the compensation of a counsel is dependent only upon winning a case he himself secured for his client, the subsequent withdrawal of the case on the client's own volition should never completely deprive counsel of any legitimate compensation for his professional services. In all cases, a client is bound to pay his lawyer for his services. The determination of bad faith only becomes significant and relevant if the adverse party will likewise be held liable in shouldering the attorney's fees.[35] (Citations omitted)

There is truth to Atty. Agustin's argument that the compromise agreement did not include or affect his attorney's fees granted in the final and executory LA Decision dated September 27, 1998. Attorney's fees become vested right when the order awarding those fees becomes final and executory and any

[34] G.R. No. 167415, February 26, 2010, 613 SCRA 742.

[35] *Id.* at 759-760.

compromise agreement removing that right must include the lawyer's participation if it is to be valid against him.[36]

However, equity dictates that an exception to such rule be made in this case with the end in view that the fair share of litigants to the benefits of a suit be not displaced by a contract for legal services.

It must be noted that the complainants were laborers who desired to contest their dismissal for being illegal. With no clear means to pay for costly legal services, they hired Atty. Agustin whose remuneration was subject to the success of the illegal dismissal suit. Before a judgment was rendered in their favor, however, the company closed down and settlement of the suit for an amount lesser than their monetary claims, instead of execution of the favorable judgment, guaranteed the atonement for their illegal termination. To make the complainants liable for the ₱335,844.18 attorney's fees adjudged in the LA Decision of September 27, 1998 would be allowing Atty. Agustin to get a lion's share of the ₱385,000.00[37] received by the former from the compromise agreement that terminated the suit; to allow that to happen will contravene the *raison d'être* for contingent fee arrangements.

Contingent fee arrangements "are permitted because they redound to the benefit of the poor client and the lawyer 'especially in cases where the client has meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for a contingent fee to be paid out of the proceeds of the litigation. Oftentimes, the contingent fee arrangement is the only means by which the poor and helpless can seek redress for injuries sustained and have their rights vindicated.'"[38]

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[36] *University of the East v. Secretary of Labor and Employment*, G.R. Nos. 93310-12, November 21, 1991, 204 SCRA 254, 263, 265.

[37] ₱35,000.00 multiplied by 11 complainants. *See* CA Decision dated September 30, 2005; *rollo*, pp. 37-39.

[38] *Rayos v. Atty. Hernandez*, 544 Phil. 447, 461 (2007).

Further, a lawyer is not merely the defender of his client's cause. He is also, first and foremost, an officer of the court and participates in the fundamental function of administering justice in society. It follows that a lawyer's compensation for professional services rendered is subject to the supervision of the court in order to maintain the dignity and integrity of the legal profession to which he belongs.[39] "[L]awyering is not a moneymaking venture and lawyers are not merchants. Law advocacy, it has been stressed, is not capital that yields profits. The returns it births are simple rewards for a job done or service rendered."[40]

More importantly, Atty. Agustin was not totally deprived of his fees. Under the joint settlement agreement, he is entitled to receive ten percent (10%) of the total settlement. We find the said amount reasonable considering that the nature of the case did not involve complicated legal issues requiring much time, skill and effort.

It cannot be said that Herrera negotiated for the compromise agreement in bad faith. It remains undisputed that Podden has ceased operations on December 1, 1994 or almost four years before the LA Decision dated September 27, 1998 was rendered.[41] In view thereof, the implementation of the award became unfeasible and a compromise settlement was more beneficial to the complainants as it assured them of reparation, albeit at a reduced amount. This was the same situation prevailing at the time when Herrera manifested and reiterated before the CA that a concession has been reached by the parties. Thus, the motivating force behind the settlement was not to deprive or prejudice Atty. Agustin of his fees, but rather the inability of a dissolved corporation to fully abide by its adjudged liabilities and the certainty of payment on the part of the complainants.

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[39] *Id.* at 459.

[40] *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*, 533 Phil. 69, 85 (2006).

[41] *Rollo*, p. 57.

Also, collusion between complainants and Herrera cannot be inferred from the fact that Atty. Agustin obtained lesser attorney's fees under the compromise agreement as against that which he could have gained if the LA Decision dated September 27, 1998 was executed. Unless there is a showing that the complainants actually received an amount higher than that stated in the settlement agreement, it cannot be said that Atty. Agustin was unlawfully prejudiced. There is no proof submitted supporting such inference.

Under the above circumstances, Herrera cannot be made solidarily liable for Atty. Agustin's fees which, as a rule, are the personal obligation of his clients, the complainants. However, pursuant to his undertaking in the joint compromise agreement, Herrera is solely bound to compensate Atty. Agustin at the rate of ten percent (10%) of the total settlement agreement.[42] Since the entire provisions of the joint compromise agreement are not available in the records and only the relevant portions thereof were quoted in the CA Resolution dated September 30, 2005, the Court deems it reasonable to impose a period of ten (10) days within which Herrera should fulfill his obligation to Atty. Agustin.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Resolution dated September 30, 2005 of the Court of Appeals in CA-G.R. SP No. 85556 is **AFFIRMED**.

Pursuant to his undertaking in the joint compromise agreement, respondent Alejandro Cruz-Herrera is **ORDERED** to pay, give, deliver to Atty. Emmanuel D. Agustin ten percent (10%) of the total settlement agreement within a period of ten (10) days from notice hereof. Both of them are hereby **REQUIRED** to report compliance with the foregoing order within a period of five days thereafter.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

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[42] *Id.* at 33.

THIRD DIVISION

[G.R. No. 184318. February 12, 2014]

ANTONIO E. UNICA, *petitioner, vs.* **ANSCOR SWIRE SHIP MANAGEMENT CORPORATION,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARERS EMPLOYMENT CONTRACT; NO IMPLIED RENEWAL OF EXPIRED CONTRACT FOR THE SEAMAN WHO COULD NOT DISEMBARK THE VESSEL WHICH WAS STILL IN THE MIDDLE OF THE SEA.— In the case at bar, although petitioner's employment contract with respondent ended on October 25, 2000 and he disembarked only on November 14, 2000 or barely 20 days after the expiration of his employment contract, such late disembarkation was not without valid reason. Respondent could not have disembarked petitioner on the date of the termination of his employment contract, because the vessel was still in the middle of the sea. Clearly, it was impossible for petitioner to safely disembark immediately upon the expiration of his contract, since he must disembark at a convenient port. Thus, petitioner's stay in the vessel for another 20 days should not be interpreted as an implied extension of his contract. A seaman need not physically disembark from a vessel at the expiration of his employment contract to have such contract considered terminated. It is a settled rule that seafarers are considered contractual employees. Their employment is governed by the contracts they sign everytime they are rehired and their employment is terminated when the contract expires. Their employment is contractually fixed for a certain period of time. Thus, when petitioner's contract ended on October 25, 2000, his employment is deemed automatically terminated, there being no mutually-agreed renewal or extension of the expired contract.

2. ID.; ID.; EXPIRATION OF CONTRACT; IF THE VESSEL IS OUTSIDE THE PHILIPPINES, THE SEAFARER SHALL CONTINUE HIS SERVICE ON BOARD UNTIL THE VESSEL'S ARRIVAL AND HE SHALL BE ENTITLED TO EARNED

WAGES AND BENEFITS PROVIDED IN HIS CONTRACT.— However, petitioner is entitled to be paid his wages after the expiration of his contract until the vessel's arrival at a convenient port. Section 19 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels is clear on this point: REPATRIATION. A. If the vessel is outside the Philippines upon the expiration of the contract, the seafarer shall continue his service on board until the vessel's arrival at a convenient port and/or after arrival of the replacement crew, provided that, in any case, the continuance of such service shall not exceed three months. The seafarer shall be entitled to earned wages and benefits as provided in his contract.

APPEARANCES OF COUNSEL

Lerio Law Office for petitioner.
Del Rosario & Del Rosario for respondent.

D E C I S I O N

PERALTA, ***J.*:**

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] and Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CEB-SP No. 01417, which annulled and set aside the Decision of the National Labor Relations Commission, Fourth Division in NLRC Case No. OFW V-000031-2005 (RAB Case No. VI-OFW-(M) 02-12-0083).

The antecedents are as follows:

Respondent Anscor Swire Ship Management Corporation is a manning agency. Since the late 1980s, petitioner was employed by respondent under various contracts. In his last contract, petitioner was deployed for a period of nine (9) months from January 29, 2000 to October 25, 2000. However, since the

[1] Penned by Associate Justice Vicente L. Yap, with Associate Justices Arsenio J. Magpale and Romeo F. Barza, concurring; *rollo,* pp. 49-56.

[2] *Rollo,* p. 47.

vessel was still at sea, petitioner was only repatriated on November 14, 2000, or twenty (20) days after the expiration of his contract of employment. Petitioner averred that since he was allowed to stay in the vessel for another twenty (20) days, there was an implied renewal of his contract of employment. Hence, when he was repatriated on November 14, 2000 without a valid cause, he was illegally dismissed.

Due to the foregoing, petitioner filed a case against the respondent for illegal dismissal, payment of retirement, disability and medical benefits, separation and holiday pay. In its defense, respondent argued that petitioner was hired for a fixed period, the duration of which depends upon the mutual agreement of the parties. Petitioner's employment was, therefore, co-terminus with the term of his contract. Hence, the claim of petitioner that he was illegally dismissed must fail, because he was repatriated due to the completion of the term of his contract.

On May 31, 2004, the Labor Arbiter (*LA*) ruled in favor of petitioner.[3] The LA ruled that since petitioner was not repatriated at the expiration of his contract on October 25, 2000, and was allowed by respondent to continue working on board its vessel up to November 14, 2000, his contract with respondent was impliedly renewed for another nine months. The LA directed respondent to pay petitioner his salary for the unexpired portion of his impliedly renewed contract, his medical benefits and attorney's fees.

Aggrieved by the decision, respondent appealed to the NLRC. On August 24, 2005, the NLRC affirmed with modification the LA's decision.[4] Like the LA, the NLRC ruled that the contract did not expire on October 25, 2000, but was impliedly extended for another nine months. This is because it was only on November 14, 2000 when petitioner was told by respondent to disembark because he would be repatriated. Since there was an implied extension of the contract for another nine months, petitioner is, therefore, entitled to payment of the unexpired term of his implied

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[3] *Id.*

[4] *Id.*

contract. The NLRC, however, deleted the award of medical benefits and reduced the amount of attorney's fees.

Undaunted, respondent filed a Petition for *Certiorari* with the CA. The CA, in its Decision[5] dated August 15, 2006, annulled and set aside the decision of the NLRC. The CA ruled that there was no implied renewal of contract and the 20 days extension was due to the fact that the ship was still at sea. Petitioner filed a motion for reconsideration, which was denied by the CA in a Resolution[6] dated August 11, 2008. Hence, the present petition.

The main issue in this case is whether or not there was an implied renewal of petitioner's contract of employment with respondent.

The petition is not meritorious.

In the case at bar, although petitioner's employment contract with respondent ended on October 25, 2000 and he disembarked only on November 14, 2000 or barely 20 days after the expiration of his employment contract, such late disembarkation was not without valid reason. Respondent could not have disembarked petitioner on the date of the termination of his employment contract, because the vessel was still in the middle of the sea. Clearly, it was impossible for petitioner to safely disembark immediately upon the expiration of his contract, since he must disembark at a convenient port. Thus, petitioner's stay in the vessel for another 20 days should not be interpreted as an implied extension of his contract. A seaman need not physically disembark from a vessel at the expiration of his employment contract to have such contract considered terminated.[7]

It is a settled rule that seafarers are considered contractual employees. Their employment is governed by the contracts they sign everytime they are rehired and their employment is terminated when the contract expires. Their employment is contractually

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[5] *Id.* at 49-56.

[6] *Id.* at 47.

[7] *Delos Santos v. Jebsen Maritime, Inc.*, 512 Phil. 301, 313 (2005).

fixed for a certain period of time.[8] Thus, when petitioner's contract ended on October 25, 2000, his employment is deemed automatically terminated, there being no mutually-agreed renewal or extension of the expired contract.

However, petitioner is entitled to be paid his wages after the expiration of his contract until the vessel's arrival at a convenient port. Section 19 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels is clear on this point:

> REPATRIATION. A. If the vessel is outside the Philippines upon the expiration of the contract, the seafarer shall continue his service on board until the vessel's arrival at a convenient port and/or after arrival of the replacement crew, provided that, in any case, the continuance of such service shall not exceed three months. The seafarer shall be entitled to earned wages and benefits as provided in his contract.

WHEREFORE, the petition is **DENIED**. The Decision and Resolution of the Court of Appeals, in CA-G.R. CEB-SP No. 01417, dated August 15, 2006 and August 11, 2008, respectively, are **AFFIRMED** with **MODIFICATION** that respondent is **DIRECTED** to **PAY** petitioner his salary from October 26, 2000 until November 14, 2000. The case is **REMANDED** to the Labor Arbiter for the purpose of computing the aforementioned monetary award to petitioner.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

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[8] *Millares v. National Labor Relations Commission*, 434 Phil. 524, 537-538 (2002).

SECOND DIVISION

[G.R. No. 187403. February 12, 2014]

TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES (Formerly PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION.), *petitioner, vs.* **ASIA PACES CORPORATION, PACES INDUSTRIAL CORPORATION, NICOLAS C. BALDERRAMA, SIDDCOR INSURANCE CORPORATION (now MEGA PACIFIC INSURANCE CORPORATION), PHILIPPINE PHOENIX SURETY AND INSURANCE, INC., PARAMOUNT INSURANCE CORPORATION,* AND FORTUNE LIFE AND GENERAL INSURANCE COMPANY,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; GUARANTY; DISTINCTION BETWEEN SURETY AND GUARANTOR; SURETY IS SOLIDARILY LIABLE WITH THE PRINCIPAL DEBTOR WHILE GUARANTOR PAYS ONLY IF THE PRINCIPAL DEBTOR IS UNABLE TO PAY.— A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable. Although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor is direct, primary and absolute; he becomes liable for the debt and duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom. The fundamental reason therefor is that a contract of suretyship effectively binds the surety as a solidary debtor. This is provided under Article 2047 of the Civil Code

* Dropped as respondent pursuant to the Court's Resolution dated December 1, 2010 granting petitioner's Motion for Partial Withdrawal in its favor, rollo, p. 696-B.

which states: Article 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so. **If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed**. **In such case the contract is called a suretyship**. Thus, since the surety is a solidary debtor, it is not necessary that the original debtor first failed to pay before the surety could be made liable; it is enough that a demand for payment is made by the creditor for the surety's liability to attach. Article 1216 of the Civil Code provides that: Article 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. Comparing a surety's obligations with that of a guarantor, the Court, in the case of *Palmares v. CA*, illumined that a surety is responsible for the debt's payment at once if the principal debtor makes default, whereas a guarantor pays only if the principal debtor is unable to pay.

2. ID.; ID.; ID.; EXTINGUISHMENT OF GUARANTY; AN EXTENSION GRANTED TO THE DEBTOR BY THE CREDITOR WITHOUT THE CONSENT OF THE GUARANTOR EXTINGUISHES THE GUARANTEE; APPLIES TO BOTH CONTRACTS OF GUARANTY AND SURETYSHIP.— Despite the distinctions, the Court in *Cochingyan, Jr. v. R&B Surety & Insurance Co., Inc.*, and later in the case of *Security Bank*, held that Article 2079 of the Civil Code, which pertinently provides that "**[a]n extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty**," equally applies to both contracts of guaranty and suretyship. The rationale therefor was explained by the Court as follows: The theory behind Article 2079 is that **an extension of time given to the principal debtor by the creditor without the surety's consent would deprive the surety of his right to pay the creditor and to be immediately subrogated to the creditor's remedies against the principal debtor upon the maturity date**. The surety is said to be entitled to protect himself against the contingency of the principal debtor or the indemnitors becoming insolvent during the extended period. x x x Proceeding from the foregoing discussion, it is quite clear that there are two sets of transactions that should be treated

separately and distinctly from one another following the civil law principle of relativity of contracts "which provides that contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Emiliano S. Samson for Nicolas Balderrama.
Santiago Arevalo Asuncion & Associates for Fortune Life and General Insurance, Co.
Algos Fernando Gumaru for Phoenix Surety and Insurance, Co.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision [2] dated April 30, 2008 and Resolution [3] dated March 27, 2009 of the Court Appeals (CA) in CA-G.R. CV No. 86558 which affirmed the Decision [4] dated April 29, 2005 of the Regional Trial Court of Makati, Branch 132 (RTC) in Civil Case No. 95-1812. The CA upheld the RTC's finding that the liabilities of Paramount Insurance Corporation (Paramount), and respondents Philippine Phoenix Surety and Insurance, Inc. (Phoenix), Mega Pacific Insurance Corporation [5] (Mega Pacific), and Fortune Life and General Insurance Company (Fortune) on their respective counter-surety bonds have been extinguished

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[1] *Id.* at 39-87.

[2] *Id.* at 92-111. Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Magdangal M. De Leon and Normandie B. Pizarro, concurring.

[3] *Id.* at 113-117.

[4] *Id.* at 325-328. Penned by Judge Rommel O. Baybay.

[5] Formerly known as "Siddcor Insurance Corp."

due to the extension of the principal obligations these bonds covered, to which said respondents did not give their consent.

The Facts

On January 19, 1981, respondents Asia Paces Corporation (ASPAC) and Paces Industrial Corporation (PICO) entered into a sub-contracting agreement, denominated as "200 KV Transmission Lines Contract No. 20-/80-II Civil Works & Electrical Erection," with the Electrical Projects Company of Libya (ELPCO), as main contractor, for the construction and erection of a double circuit bundle phase conductor transmission line in the country of Libya. To finance its working capital requirements, ASPAC obtained loans from foreign banks Banque Indosuez and PCI Capital (Hong Kong) Limited (PCI Capital) which, upon the latter's request, were secured by several Letters of Guarantee issued by petitioner Trade and Investment Development Corporation of the Philippines (TIDCORP), [6] then Philippine Export and Foreign Loan Guarantee Corp., a government owned and controlled corporation created for the primary purpose of, among others, "guarantee[ing], with the prior concurrence of the Monetary Board, subject to the rules and regulations that the Monetary Board may prescribe, approved foreign loans, in whole or in part, granted to any entity, enterprise or corporation organized or licensed to engage in business in the Philippines." [7] Under the Letters of Guarantee, TIDCORP irrevocably and unconditionally guaranteed full payment of ASPAC's loan obligations to Banque Indosuez and PCI Capital in the event of default by the latter. [8] The denominations of these letters, including the loan agreements secured by each, are detailed as follows: [9]

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[6] *Rollo,* pp. 94-95.

[7] See Section 3 of Republic Act No. 8494, entitled "AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 1080, AS AMENDED, BY REORGANIZING AND RENAMING THE PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION, EXPANDING ITS PRIMARY PURPOSES, AND FOR OTHER PURPOSES."

[8] *Rollo,* p. 95.

[9] *Id.* at 94-95 and 49.

LETTER OF GUARANTEE	LOAN AGREEMENT SECURED	CREDITOR
Letter of Guarantee No. 82-446 F dated March 11, 1982 (LG No. 82-446 F)	Loan Agreement dated March 9, 1982 (with an extension dated March 25, 1983), in the amount of US$250,000.00	Banque Indosuez
Letter of Guarantee No. 82-498 F dated June 10, 1982 (LG No. 82-498 F)	Loan Agreement dated June 10, 1982, in the amount of US$250,000.00	PCI Capital
Letter of Guarantee No. 82-548 F dated October 5, 1982 (LG No. 82-548 F)	Loan Agreement dated October 5, 1982, in the amount of US$2,000,000.00	PCICapital

As a condition precedent to the issuance by TIDCORP of the Letters of Guarantee, ASPAC, PICO, and ASPAC's President, respondent Nicolas C. Balderrama (Balderrama) had to execute several Deeds of Undertaking, [10] binding themselves to jointly and severally pay TIDCORP for whatever damages or liabilities it may incur under the aforementioned letters. **In the same light, ASPAC, as principal debtor, entered into surety agreements (Surety Bonds) with Paramount, Phoenix, Mega Pacific and Fortune (bonding companies), as sureties, also holding themselves solidarily liable to TIDCORP, as creditor, for whatever damages or liabilities the latter may incur under the Letters of Guarantee.** [11] The details of said bonds, including their respective coverage amounts and expiration dates, among others, are as follows:

[10] *Id.* at 118-127.

[11] See *id.* at 95-96.

SURETY BOND	LETTER OF GUARANTEE COVERED	COVERAGE AMOUNT[12]	BONDING COMPANY/ SURETY	FINAL EXPIRATION DATE
Surety Bond No. G(16)01943[13]	LG No. 82-446 F	₱2,752,000.00	Paramount	March 5,1986[14]
Surety Bond No. G(16)01906[15]	LG No. 82-498 F	₱1,845,000.00	Paramount	June 4, 1986[16]
Surety Bond No. G(16)15495[17]		1,849,000.00	Fortune	November 21,1985[18]
Surety Bond No. G(16)01903[19]	LG No. 82-548 F	₱11,970,000.00	Phoenix	September 28,1985[20]
Surety Bond No. G(16)01497[21]		₱5,030,000.00	MegaPacific	September 28,1985[22]

ASPAC eventually defaulted on its loan obligations to Banque Indosuez and PCI Capital, prompting them to demand payment from TIDCORP under the Letters of Guarantee. The demand

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[12] *Id.* at 95.

[13] *Id.* at 131-134 and 140.

[14] *Id.* at 53 and 230-231.

[15] *Id.* at 128-130 and 139.

[16] *Id.* at 53.

[17] *Id.* at 137 and 143.

[18] *Id.* at 54, 137, and 143.

[19] *Id.* at 52 and 141.

[20] *Id.* at 54, 133-134, and 141.

[21] *Id.* at 135-136 and 142.

[22] *Id.* at 54, 135-136, and 142.

letter of Banque Indosuez was sent to TIDCORP on March 5, 1984, [23] while that of PCI Capital was sent on February 21, 1985.[24] In turn, TIDCORP demanded payment from Paramount, [25] Phoenix, [26] Mega Pacific, [27] and Fortune [28] under the Surety Bonds. TIDCORP's demand letters to the bonding companies were sent on May 28, 1985, or before the final expiration dates of all the Surety Bonds, but to no avail. [29]

Taking into account the moratorium request [30] issued by the Minister of Finance of the Republic of the Philippines (whereby members of the international banking community were requested to grant government financial institutions, [31] such as TIDCORP, among others, a 90-day roll over from their foreign debts beginning October 17, 1983), TIDCORP and its various creditor banks, such as Banque Indosuez and PCI Capital, forged a Restructuring Agreement [32] on April 16, 1986, extending the maturity dates of the Letters of Guarantee. [33] The bonding companies were not privy to the Restructuring Agreement and, hence, did not

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[23] *Id.* at 96 and 257.

[24] *Id.*

[25] *Id.* at 165-168. TIDCORP initially sent a demand letter on May 24, 1984 to Paramount, calling for the payment of Surety Bond No. G(16)01943.

[26] *Id.* at 169-171.

[27] *Id.* at 172-174.

[28] *Id.* at 175-176.

[29] *Id.* at 58-59 and 192-194. TIDCORP sent similar demand letters to the bonding companies on October 2, 1986 and May 19, 1994.

[30] *Id.* at 144-145.

[31] *Id.* at 96.

[32] *Id.* at 104-105, 188, and 258.

[33] Section 4.01 of the Restructuring Agreement reads:

> Section 4.01. *Scheduled Payments*. — **The Obligor shall repay to each Bank the principal amount of each Credit of such Bank in eleven consecutive semi-annual installments, the first of which shall be on December 31, 1989** and the remaining ten of which shall be on the last day of each sixth Restructure Month thereafter (each such date being a "Principal Payment Date"). Each installment shall be in the amount of one-eleventh of the principal amount of such Credit: provided that the last

give their consent to the payment extensions granted by Banque Indosuez and PCI Capital, among others, in favor of TIDCORP. Nevertheless, following new payment schedules, [34] TIDCORP fully settled its obligations under the Letters of Guarantee to both Banque Indosuez and PCI Capital on December 1, 1992, and April 19 and June 4, 1991, respectively. [35] Seeking payment for the damages and liabilities it had incurred under the Letters of Guarantee and with its previous demands therefor left unheeded, TIDCORP filed a collection case [36] against: (*a*) ASPAC, PICO, and Balderrama on account of their obligations under the deeds of undertaking; and (*b*) the bonding companies on account of their obligations under the Surety Bonds.

The RTC Ruling

In a Decision [37] dated April 29, 2005, the RTC partially granted TIDCORP's complaint and thereby found ASPAC, PICO, and Balderrama jointly and severally liable to TIDCORP in the sum of ₱277,891,359.66 pursuant to the terms of the Deeds of Undertaking, but absolved the bonding companies from liability on the ground that the moratorium request and the consequent payment extensions granted by Banque Indosuez and PCI Capital in TIDCORP's favor without their consent extinguished their obligations under the Surety Bonds. As basis, the RTC cited Article 2079 of the Civil Code which provides that an extension granted to the debtor by the creditor without the consent of the guarantor/surety extinguishes the guaranty/suretyship, and, in this relation, added that the bonding companies "should not be held liable as sureties for the extended period." [38]

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such installment shall be in the amount necessary to repay in full the unpaid principal amount of such Credit. **The final Principal payment Date will be on December 31, 1994.** (Emphases supplied; *id.* at 105.)

[34] *Id.* at 154-157 and 158-164.

[35] *Id.* at 97, 190 and 258.

[36] *Id.* at 177-197.

[37] *Id.* at 325-328.

[38] *Id.* at 328.

Dissatisfied, TIDCORP and Balderrama filed separate appeals before the CA. [39] For its part, TIDCORP averred, among others, that Article 2079 of the Civil Code is only limited to contracts of guaranty, and, hence, should not apply to contracts of suretyship. Meanwhile, Balderrama theorized that the main contractor's (*i.e.*, ELPCO) failure to pay ASPAC due to the war/political upheaval in Libya which further resulted in the latter's inability to pay Banque Indosuez and PCI Capital had the effect of releasing him from his obligations under the Deeds of Undertaking.

The CA Ruling

In a Decision [40] dated April 30, 2008, the CA upheld the RTC's ruling that the moratorium request "had the effect of an extension granted to a debtor, which extension was without the consent of the guarantor, and thus released the surety companies from their respective liabilities under the issued surety bonds" pursuant to Article 2079 of the Civil Code. [41] To this end, it noted that "the maturity of the foreign loans was extended to December 31, 1989 or up to December 31, 1994 as provided under Section 4.01 of the Restructuring Agreement," and that "said extension is beyond the expiry date[s] of the surety bonds x x x and the maturity date of the principal obligations it purportedly secured, which extension was without [the bonding companies'] consent." [42] It further discredited TIDCORP's contention that Article 2079 of the Civil Code is only limited to contracts of guaranty by citing the Court's pronouncement on the provision's applicability to suretyships in the case of *Security Bank and Trust Co., Inc. v. Cuenca* [43] (*Security Bank*). As for Balderrama, the CA debunked his assignment of error, ratiocinating that "[h]is undertaking to pay is not dependent upon the payment to be made by ELPCO to ASPAC." [44] The

[39] *Id.* at 284-324 and 391-408.

[40] *Id.* at 92-111.

[41] *Id.* at 103-104.

[42] *Id.* at 104-105.

[43] 396 Phil. 108 (2000); see also *rollo*, p. 105.

[44] *Rollo*, pp. 107-108.

CA, however, modified the RTC decision to the extent of holding ASPAC, PICO, and Balderrama liable to TIDCORP for attorney's fees in the reasonable amount of ₱2,000,000.00 since the payment of attorney's fees was stipulated by the parties in the Deed of Undertaking dated April 2, 1982. [45]

Aggrieved, TIDCORP and Balderrama filed separate motions for reconsideration,[46] which were, however, denied in a Resolution [47] dated March 27, 2009. Only TIDCORP elevated the matter to the Court on appeal. Pending resolution thereof, or on October 6, 2010, TIDCORP filed a Motion for Partial Withdrawal [48] of its claim against Paramount in view of their Compromise Agreement [49] dated June 24, 2010 which was approved [50] by the CA in CA-G.R. CV No. 92818, entitled "*Trade & Investment Corporation of the Phils., et al. v. Roblet Industrial Construction Corp. and Paramount Insurance Corp., et al.*" [51]

The Issue Before the Court

The essential issue raised for the Court's resolution is whether or not the CA erred in holding that the bonding companies' liabilities to TIDCORP under the Surety Bonds have been extinguished by the payment extensions granted by Banque Indosuez and PCI Capital to TIDCORP under the Restructuring Agreement.

The Court's Ruling

The petition is granted.

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[45] *Id.* at 110-111.

[46] *Id.* at 440-451 and 464-473.

[47] *Id.* at 113-117.

[48] *Id.* at 662-667.

[49] *Id.* at 668-678.

[50] See Decision dated July 9, 2010 in CA-G.R. CV No. 92818; *id.* at 682-691.

[51] The Court granted the Motion for Partial Withdrawal in a Resolution dated December 1, 2010 and, hence, "consider[ed] the case closed and terminated insofar as [Paramount] is concerned." (See *id.* at 696-B.)

A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable. Although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor is direct, primary and absolute; he becomes liable for the debt and duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom. [52] The fundamental reason therefor is that a contract of suretyship effectively binds the surety as a solidary debtor. This is provided under Article 2047 of the Civil Code which states:

> Article 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.
>
> **If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed**. **In such case the contract is called a suretyship**. (Emphasis and underscoring supplied)

Thus, since the surety is a solidary debtor, it is not necessary that the original debtor first failed to pay before the surety could be made liable; it is enough that a demand for payment is made by the creditor for the surety's liability to attach. [53] Article 1216 of the Civil Code provides that:

> Article 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

Comparing a surety's obligations with that of a guarantor, the Court, in the case of *Palmares v. CA*, [54] illumined that a

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[52] *Molino v. SDIC*, 415 Phil. 587, 597 (2001).

[53] See *TIDCORP v. Roblett Industrial Construction Corp.*, 523 Phil. 360 (2006).

[54] 351 Phil. 664 (1998).

surety is responsible for the debt's payment at once if the principal debtor makes default, whereas a guarantor pays only if the principal debtor is unable to pay, *viz.*: [55]

> **A surety is an insurer of the debt, whereas a guarantor is an insurer of the solvency of the debtor**. A suretyship is an undertaking that the debt shall be paid; a guaranty, an undertaking that the debtor shall pay. Stated differently, a surety promises to pay the principal's debt if the principal will not pay, while a guarantor agrees that the creditor, after proceeding against the principal, may proceed against the guarantor if the principal is unable to pay. A surety binds himself to perform if the principal does not, without regard to his ability to do so. A guarantor, on the other hand, does not contract that the principal will pay, but simply that he is able to do so. In other words, **a surety undertakes directly for the payment and is so responsible at once if the principal debtor makes default, while a guarantor contracts to pay if, by the use of due diligence, the debt cannot be made out of the principal debtor**. (Emphases and underscoring supplied; citations omitted)

Despite these distinctions, the Court in *Cochingyan, Jr. v. R&B Surety & Insurance Co., Inc.*, [56] and later in the case of *Security Bank*, held that Article 2079 of the Civil Code, which pertinently provides that "**[a]n extension granted to the debtor by the creditor without the consent of the guarantor extinguishes the guaranty**," equally applies to both contracts of guaranty and suretyship. The rationale therefor was explained by the Court as follows: [57]

> The theory behind Article 2079 is that **an extension of time given to the principal debtor by the creditor without the surety's consent would deprive the surety of his right to pay the creditor and to be immediately subrogated to the creditor's remedies against the principal debtor upon the maturity date.** The surety is said to be entitled to protect himself against the contingency of the principal

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[55] *Id.* at 680.

[56] 235 Phil. 332 (1987).

[57] *Security Bank and Trust Co., Inc. v. Cuenca*, *supra* note 43, at 125, citing *Cochingyan, Jr. v. R&B Surety & Insurance Co., Inc.*, *supra* note 56, at 347-348.

debtor or the indemnitors becoming insolvent during the extended period. (Emphasis and underscoring supplied; citations omitted)

Applying these principles, the Court finds that the payment extensions granted by Banque Indosuez and PCI Capital to TIDCORP under the Restructuring Agreement did not have the effect of extinguishing the bonding companies' obligations to TIDCORP under the Surety Bonds, notwithstanding the fact that said extensions were made without their consent. This is because Article 2079 of the Civil Code refers to a payment extension granted by the creditor to the principal debtor without the consent of the guarantor or surety. In this case, the Surety Bonds are suretyship contracts which secure the debt of ASPAC, the principal debtor, under the Deeds of Undertaking to pay TIDCORP, the creditor, the damages and liabilities it may incur under the Letters of Guarantee, within the bounds of the bonds' respective coverage periods and amounts. No payment extension was, however, granted by TIDCORP in favor of ASPAC in this regard; hence, Article 2079 of the Civil Code should not be applied with respect to the bonding companies' liabilities to TIDCORP under the Surety Bonds.

The payment extensions granted by Banque Indosuez and PCI Capital pertain to TIDCORP's own debt under the Letters of Guarantee wherein it (TIDCORP) irrevocably and unconditionally guaranteed full payment of ASPAC's loan obligations to the banks in the event of its (ASPAC) default. In other words, the Letters of Guarantee secured ASPAC's loan agreements to the banks. Under this arrangement, TIDCORP therefore acted [58] as a guarantor, [59] with ASPAC as the principal

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[58] Records show that TIDCORP fully settled its obligations under the Letters of Guarantee to both Banque Indosuez and PCI Capital on December 1, 1992, and April 19 and June 4, 1991, respectively (*Id.* at 16, 190 & 258).

[59] Quoted hereunder for reference are the pertinent portions of the Court's ruling in the case of *Phil. Export & Foreign Loan Guarantee Corp. v. V.P. Eusebio Construction, Inc.* (478 Phil. 269, 286-287 [2004]) which involved a similar Letter of Guarantee issued by TIDCORP's predecessor, the Philippine Export and Foreign Loan Guarantee Corp., finding the same to be a contract of guaranty, *viz.*:

debtor, and the banks as creditors. Proceeding from the foregoing discussion, it is quite clear that there are two sets of transactions that should be treated separately and distinctly from one another following the civil law principle of relativity of contracts "which provides that contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if

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In determining petitioner's status, it is necessary to read Letter of Guarantee No. 81-194-F, which provides in part as follows:

In consideration of your issuing the above performance guarantee/ counter-guarantee, we hereby unconditionally and irrevocably guarantee, under our Ref. No. LG-81-194 F to pay you on your first written or telex demand Iraq Dinars Two Hundred Seventy One Thousand Eight Hundred Eight and fils six hundred ten (ID271,808/610) representing 100% of the performance bond required of V.P. EUSEBIO for the construction of the Physical Therapy Institute, Phase II, Baghdad, Iraq, plus interest and other incidental expenses related thereto.

I**n the event of default by V.P. EUSEBIO, we shall pay you 100% of the obligation unpaid** but in no case shall such amount exceed Iraq Dinars (ID) 271,808/610 plus interest and other incidental expenses. . . .

Guided by the abovementioned distinctions between a surety and a guaranty, as well as the factual milieu of this case, we find that the Court of Appeals and the trial court were correct in ruling that the petitioner is a guarantor and not a surety. That the guarantee issued by the petitioner is unconditional and irrevocable does not make the petitioner a surety. As a guaranty, it is still characterized by its subsidiary and conditional quality because it does not take effect until the fulfillment of the condition, namely, that the principal obligor should fail in his obligation at the time and in the form he bound himself. In other words, an unconditional guarantee is still subject to the condition that the principal debtor should default in his obligation first before resort to the guarantor could be had. A conditional guaranty, as opposed to an unconditional guaranty, is one which depends upon some extraneous event, beyond the mere default of the principal, and generally upon notice of the principal's default and reasonable diligence in exhausting proper remedies against the principal.

It appearing that Letter of Guarantee No. 81-194-F merely stated that in the event of default by respondent VPECI the petitioner shall pay, the obligation assumed by the petitioner was simply that of an unconditional guaranty, not conditional guaranty. But as earlier ruled the fact that petitioner's guaranty is unconditional does not make it a surety. Besides, surety is never presumed. A party should not be considered a surety where the contract itself stipulates that he is acting only as a guarantor. It is only when the guarantor binds himself solidarily with the principal debtor that the contract becomes one of suretyship. (Emphases supplied; citations omitted)

he is aware of such contract and has acted with knowledge thereof." [60] Verily, as the Surety Bonds concern ASPAC's debt to TIDCORP and not TIDCORP's debt to the banks, the payment extensions (which conversely concern TIDCORP's debt to the banks and not ASPAC's debt to TIDCORP) would not deprive the bonding companies of their right to pay their creditor (TIDCORP) and to be immediately subrogated to the latter's remedies against the principal debtor (ASPAC) upon the maturity date. It must be stressed that these payment extensions did not modify the terms of the Letters of Guarantee but only provided for a new payment scheme covering TIDCORP's liability to the banks. In fine, considering the inoperability of Article 2079 of the Civil Code in this case, the bonding companies' liabilities to TIDCORP under the Surety Bonds – except those issued by Paramount and covered by its Compromise Agreement with TIDCORP – have not been extinguished. Since these obligations arose and have been duly demanded within the coverage periods of all the Surety Bonds,[61] TIDCORP's claim is hereby granted and the CA's ruling on this score consequently reversed. Nevertheless, given that no appeal has been filed on Balderrama's adjudged liability or on the award of attorney's fees, the CA's dispositions on these matters are now deemed as final and executory.

WHEREFORE, the petition is **GRANTED**. The Decision dated April 30, 2008 and Resolution dated March 27, 2009 of the Court of Appeals in CA-G.R. CV No. 86558 are **MODIFIED** in that respondents Philippine Phoenix Surety and Insurance, Inc., Mega Pacific Insurance Corporation, Fortune Life and General Insurance Company are **ORDERED** to fulfill their respective obligations to petitioner Trade and Investment Development Corporation of the Philippines (TIDCORP) under the Surety Bonds subject of this case, discounting the obligations

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[60] *Integrated Packaging Corp. v. CA*, 388 Phil. 835, 845 (2000).

[61] TIDCORP sent its preliminary demand letters to the bonding companies on May 28, 1985, or before the expiration dates of the Surety Bonds, which — as may be seen from the table above-presented — range from September 28, 1985 at the earliest to June 4, 1986 at the latest.

arising from the Surety Bonds issued by Paramount Insurance Corporation and covered by its Compromise Agreement with TIDCORP.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.*, concur.

SECOND DIVISION

[G.R. No. 188694. February 12, 2014]

RICARDO L. ATIENZA and ALFREDO A. CASTRO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.— Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. It is sufficient for conviction if: (*a*) there is more than one circumstance; (*b*) the facts from which the inferences are derived are proven; and (*c*) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Stated differently, the test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly

proven must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence.

2. ID.; ID.; HEARSAY EVIDENCE; NOTARIZED AFFIDAVITS ARE HEARSAY EVIDENCE UNLESS AFFIANTS THEMSELVES TESTIFY THEREON.— It is settled that while affidavits may be considered as public documents if they are acknowledged before a notary public (here, a public officer authorized to administer oaths), they are still classified as hearsay evidence unless the affiants themselves are placed on the witness stand to testify thereon and the adverse party is accorded the opportunity to cross-examine them.

3. ID.; ID.; MOTIVE; NOT SUFFICIENT TO SUPPORT A CONVICTION.— [I]t is well-established that mere proof of motive, no matter how strong, is not sufficient to support a conviction, most especially if there is no other reliable evidence from which it may reasonably be deduced that the accused was the malefactor.

4. CRIMINAL LAW; CONSPIRACY; MAY BE INFERRED FROM THE COLLECTIVE ACTS OF THE ACCUSED; NOT MANIFESTED IN CASE AT BAR.— While direct proof is not essential to establish conspiracy as it may be inferred from the collective acts of the accused before, during and after the commission of the crime which point to a joint purpose, design, concerted action, and community of interests, records are, however, bereft of any showing as to how the particular acts of petitioners figured into the common design of taking out the subject volume and inserting the falsified documents therein. Hence, the prosecution's theory of conspiracy does not deserve any merit.

5. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; NOT APPRECIATED IN THE ABSENCE OF MORAL CERTAINTY.— [P]roof beyond reasonable doubt is the degree of proof that, after investigation of the whole record, produces moral certainty in an unprejudiced mind of the accused's culpability. Such moral certainty is, however, lacking in this case due to the insufficiency of the circumstantial evidence presented.

6. ID.; JURISDICTION; MUNICIPAL TRIAL COURTS; INCLUDES FALSIFICATION OF PUBLIC DOCUMENT.— [T]he RTC did not have jurisdiction to take cognizance of Criminal Case No. 01-197426 (*i.e.*, the falsification case) since Falsification of Public Document under Article 172(1) of the RPC, which is punishable by *prision correccional* in its medium and maximum periods (or imprisonment for 2 years, 4 months and 1 day to 6 years) and a fine of not more than ₱5,000.00, falls within the exclusive jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts pursuant to Section 32(2) of Batas Pambansa Bilang 129, otherwise known as the "Judiciary Reorganization Act of 1980," as amended by RA 7691.

7. ID.; ID.; LACK OF JURISDICTION OVER THE SUBJECT MATTER MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS.— While petitioners raised this jurisdictional defect for the first time in the present petition, they are not precluded from questioning the same. Indeed, jurisdiction over the subject matter is conferred only by the Constitution or the law and cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court. The rule is well-settled that lack of jurisdiction over the subject matter **may be raised at any stage of the proceedings**. Hence, questions of jurisdiction may be cognizable even if raised for the first time on appeal.

8. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE; PREVAILS IN THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT.— The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence, failing which, the presumption of innocence prevails and the accused should be acquitted. This, despite the fact that his innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness or even absence of defense. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction, as in this case. Courts should be guided by the principle that it would

be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.

APPEARANCES OF COUNSEL

Solomon Gonong Dela Cruz Law Offices for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated November 28, 2008 of the Court of Appeals (CA) in CA-G.R. CR. No. 30650 which affirmed the Decision[3] dated June 8, 2006 of the Regional Trial Court of Manila, Branch 21 (RTC) in Criminal Case Nos. 01-197425 and 01-197426, finding petitioners Ricardo L. Atienza (Atienza) and Alfredo A. Castro (Castro) guilty beyond reasonable doubt of the crimes of Robbery and Falsification of Public Document.

The Facts

Atienza and Castro (petitioners) are employees of the CA, particularly assigned to its Budget Division and holding the positions of Budget Officer I and Utility Worker I,[4] respectively, at the time material to this case.

On March 20, 1995, at about past noon,[5] Juanito Atibula (Atibula), Records Officer I and Custodian of the CA Original

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[1] *Rollo*, pp. 8-38.

[2] *Id.* at 42-61. Penned by Associate Justice Isaias Dicdican, with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring.

[3] *Id.* at 84-97. Penned by Judge Amor A. Reyes.

[4] See Information in Criminal Case Nos. 01-197425 and 01-197426; records, pp. 3 and 6.

[5] Transcript of Stenographic Notes (TSN), December 3, 2002, p. 15.

Decisions in the CA Reporter's Division, was invited by Castro to attend Atienza's birthday party somewhere along Bocobo Street, Ermita, Manila. At the party, Atienza introduced Atibula to a certain Dario and asked him to assist the latter in searching for the CA decision[6] in the case entitled "*Mateo Fernando v. Heirs of D. Tuason, Inc.*"[7] (*Fernando*), docketed as CA-G.R. No. 36808-R.[8]

Thereafter, Atibula returned to the office – followed a few minutes later by Dario – and searched for the aforementioned decision which was found compiled in Volume 260 of the CA Original Decisions. As Dario was scanning through the said volume, Atibula observed that he was comparing its pages[9] to the discolored papers he was holding.[10] Dario likewise scanned Volumes 265 and 267,[11] and placed check marks on the papers he was holding.[12]

On March 24, 1995, after office hours, Atibula saw Dario outside the CA compound along Maria Orosa Street.[13] As they walked side by side towards the jeepney stop, Dario requested Atibula to insert a Decision dated September 26, 1968 in one of the volumes of the CA Original Decisions. However, Atibula refused and immediately left.[14]

On April 21, 1995, Atienza offered Atibula the amount of ₱50,000.00 in exchange for Volume 260,[15] which the latter turned

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[6] TSN, December 2, 2002, pp. 5-7.

[7] *Rollo*, p. 45.

[8] Records, p. 669.

[9] TSN, December 2, 2002, pp. 7-8.

[10] Sinumpaang Salaysay dated August 9, 1995 executed by Juanito Atibula (Atibula's Sinumpaang Salaysay), records, p. 320.

[11] TSN, December 3, 2002, p. 18.

[12] Atibula's Sinumpaang Salaysay, records, p. 320.

[13] TSN, December 3, 2002, pp. 13-14.

[14] *Rollo*, p. 46; see also Atibula's Sinumpaang Salaysay, records, pp. 320-321.

[15] TSN, December 3, 2002, pp. 19-20.

down. Atienza then ridiculed him saying, "*duwag ka, pera na nga ito ayaw mo pa*," to which Atibula retorted, "*ikaw ang duwag dahil nagpapakita ka ng kabuktutan*." Disturbed by the situation, Atibula reported the incident to Atty. Arnel Macapagal[16] (Atty. Macapagal), the Assistant Chief of the CA Reporter's Division, who then instructed him (Atibula) to hide Volumes 260, 265 and 267[17] in a safe place. [18]

On May 9, 1995, Atibula discovered that Volume 266[19] covering the period from January 28 to February 12, 1969 was missing[20] and, hence, immediately reported the same to Atty. Macapagal. Two days after the discovery of the loss, Atibula encountered Atienza near the canteen,[21] shouting "[*p*]*utang ina mo, Juaning, pinahirapan mo kami!*"[22]

On May 18, 1995, a certain Nelson de Castro, Clerk IV detailed at the CA Reporter's Division,[23] handed to Atibula a bag containing a gift-wrapped package which turned out to be the missing Volume 266. He claimed that it was Castro who asked him to deliver the said package to Atibula.[24]

Having been notified of Volume 266's return, Atty. Macapagal then directed Atibula to ascertain who borrowed the volume. Records, however, disclosed no one.[25] Separately, Atibula

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[16] TSN, December 2, 2002, pp. 12-13.

[17] TSN, December 3, 2002, p. 21.

[18] Atibula's Sinumpaang Salaysay, records, p. 321.

[19] *Id.* at 22.

[20] Letters dated May 22, 1995 and June 21, 1995 of Atty. Gemma Leticia F. Tablate (Letters dated May 22, 1995 and June 21, 1995), records, pp. 336 and 667.

[21] Atibula's Sinumpaang Salaysay, *id.* at 321.

[22] TSN, December 2, 2002, p. 14.

[23] Letters dated May 22, 1995 and June 21, 1995, records, pp. 336 and 667.

[24] TSN, December 2, 2002, pp. 13-14.

[25] Atibula's Sinumpaang Salaysay, records, p. 321.

compared the contents of Volume 266 with the index of the decisions and noticed that there were two new documents inserted therein,[26] namely: (*a*) a Resolution[27] dated February 11, 1969 (subject resolution), ostensibly penned by Associate Justice Juan P. Enriquez (Justice Enriquez) and concurred in by Associate Justices Magno S. Gatmaitan and Edilberto Soriano, recalling and setting aside the Entry of Judgment earlier issued in the *Fernando* case; and (*b*) a Decision[28] dated April 16, 1970 (subject decision), also ostensibly penned by Justice Enriquez and concurred in by Associate Justices Jesus Y. Perez and Jose M. Mendoza, amending the original decision dated September 26, 1968 in the aforementioned case. Consequently, Atibula reported his findings to Atty. Macapagal who, in turn, informed Atty. Gemma Leticia F. Tablate (Atty. Tablate), then Chief of the CA Reporter's Division, of the same. They tried to verify the genuineness, authenticity and existence of the subject resolution and decision, and found that the compilation of the duplicate original decisions/resolutions of Justice Enriquez did not bear the said promulgations. Atty. Tablate reported the incident to then CA Presiding Justice Nathanael P. De Pano, Jr.[29] who immediately requested the National Bureau of Investigation (NBI) to conduct an investigation on the matter.[30]

Laboratory analysis and comparative examination of the subject resolution and decision[31] as well as of a decision in another case found in pages 906 to 922 of Volume 266 of the CA Original Decisions were conducted by the NBI. [32] As a result, it issued its Questioned Documents Report No. 937-1295,[33] finding that:

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[26] Letters dated May 22, 1995 and June 21, 1995, *id.* at 336 and 667.

[27] 266 CA Original Decisions 906-907.

[28] *Id.* at 908-915.

[29] Letters dated May 22, 1995 and June 21, 1995, records, pp. 336-337 and 667-668.

[30] Letter dated June 26, 1995, *id.* at 669-670.

[31] *Id.* at 329.

[32] TSN, August 12, 2002, pp. 41-43.

[33] Records, pp. 329-334.

(*a*) Volume 266 had indeed been altered;[34] and (*b*) the signatures of the CA Justices in the subject resolution and decision (questioned signatures) and their standard/sample signatures "were not written by one and the same person,"[35] leading to the conclusion that the questioned signatures were forgeries.[36]

Meanwhile, sometime in the second week of July 1995, an inspection of the air-conditioning units at the office of the CA Reporter's Division was conducted, whereby it was discovered that the improvised angle bar supporting the air conditioning unit at the right most end from the main door was corroded with rust and the portion of the wall holding the same was broken ("*may bak-bak na*").[37] NBI Agents, Atty. Daniel D. Daganzo[38] (Atty. Daganzo) and Norman R. Decampong[39] then conducted an ocular inspection of the premises, and, in the course thereof, interviewed several personnel of the CA Maintenance Division. Said investigation yielded the following findings: (*a*) there were no signs of forcible entry;[40] (*b*) the perpetrators gained entry to the office of the CA Reporter's Division "by passing through the hole on the concrete wall after removing the air conditioning unit"[41] located on the right most [sic] end from the main door;[42] (*c*) there was conspiracy to commit the crime of Falsification of Public Document between Atienza and Dario in view of their "concerted efforts through previous or simultaneous acts and deeds";[43] and (*d*) Castro

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[34] *Id.* at 329.

[35] *Id.* at 333.

[36] TSN, August 12, 2002, pp. 56-61.

[37] Sinumpaang Salaysay dated April 29, 1997 executed by Cielito Salud; records, p. 510.

[38] TSN, October 15, 2002, p. 1.

[39] See Final Report dated May 23, 1997, records, p. 557.

[40] *Id.* at 551.

[41] *Id.* at 554.

[42] *Id.* at 551.

[43] *Id.* at 555.

assisted Atienza and Dario "to profit from the effects of the crime by returning safely the missing volume to the [CA Reporter's Division]."[44] Consequently, a criminal complaint was filed by the NBI and the Fact-Finding and Intelligence Bureau of the Office of the Ombudsman against Atienza, Castro, and Dario before the Evaluation and Preliminary Investigation Bureau of the OMB, docketed as OMB-0-97-2054,[45] charging them for the following crimes: (*a*) Falsification of Public Document; (*b*) violation of Section 3(a)[46] of Republic Act No. (RA) 3019,[47] as amended; and (*c*) violation of Section 8[48] of RA 6713.[49]

After investigation, the charges involving the pertinent provisions of RAs 3019 and 6713 were dismissed for insufficiency of evidence,[50] but it was contrarily determined that there existed

[44] *Id.* at 556.

[45] *Rollo,* p. 65.

[46] Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

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[47] Entitled the "ANTI-GRAFT AND CORRUPT PRACTICES ACT."

[48] Relative to petitioners' failure to file their respective sworn Statement of Assets, Liabilities and Net Worth and Disclosure of Business Interests and Financial Connections covering the years 1989 to 1994, as required under Section 8 of RA 6713; *rollo*, p. 71.

[49] Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES"; otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

[50] *Rollo,* p. 82.

probable cause to charge Atienza, Castro, and Dario[51] for the crimes of Robbery under Article 299(a)(1)[52] of the Revised Penal Code[53](RPC), as amended, and of Falsification of Public Document under Article 172(1)[54] in relation to Article 171(6)[55] of the same code. Thus, the corresponding Informations,[56] respectively docketed as Criminal Case Nos. 01-197425 and 01-197426, were filed before the RTC. Petitioners posted bail[57]

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[51] See Resolution dated August 9, 2001 penned by Graft Investigation Officer I Francisco Alan L. Molina, *Id.* at 65-83.

[52] Art. 299. *Robbery in an inhabited house or public building or edifice devoted to worship*. — Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by *reclusion temporal*, if the value of the property taken shall exceed 250 pesos, and if:

(a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:

1. Through an opening not intended for entrance or egress;

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[53] Act No. 3815, as amended, entitled "AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS."

[54] Art. 172. *Falsification by private individual and use of falsified documents.* — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than P5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

x x x x x x x x x

[55] Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prision mayor* and a fine not to exceed P5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

6. Making any alteration or intercalation in a genuine document which changes its meaning;

x x x x x x x x x

[56] Records, pp. 2-4 and 5-7, respectively.

[57] *Id.* at 55 and 69.

and, thereafter, pleaded "not guilty"[58] to the charges during their arraignment, while Dario remained at large.

In his defense, Atienza denied having anything to do with the questioned incidents[59] as he was not even summoned by the CA Clerk of Court or the Chief of the Reporter's Division,[60] and became aware of the incident only when he and Castro were subpoenaed by the NBI Special Investigators.[61] Further, he gave the alibi that he was out of the office 4 days a week during the months of April to June 1995,[62] reporting only on Fridays,[63] since he had to perform his duties as Budget Officer I of the CA Budget Division and Liaison Officer to the Department of Budget and Management, the Committee on Appropriation of the Congress, Committee on Appropriation of the lower house, and the Committee on Finance of the Senate and the GSIS.

On the other hand, Castro did not endeavor to refute the allegations in the Informations filed against him and the other accused.[64]

The RTC Ruling

After trial on the merits, the RTC rendered a Decision[65] on June 8, 2006, finding petitioners guilty beyond reasonable doubt of the crimes of Robbery under Article 299(a)(1) of the RPC and Falsification of Public Document under Article 172(1) in relation to Article 171(6) of the RPC, and sentenced them to each suffer: (*a*) the indeterminate penalty of six (6) months and one (1) day, as minimum, to two (2) years and four (4)

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[58] See Order dated March 13, 2002, *id.* at 113.

[59] TSN, June 1, 2004, p. 14.

[60] *Id.* at 10 & 15.

[61] *Id.* at 4.

[62] *Id.* at 3-4; *rollo*, p. 48.

[63] TSN, June 1, 2004, p. 14

[64] *Rollo*, p. 58.

[65] *Id.* at 84-97.

months of *prision correccional*, as maximum, for the first crime; and (*b*) the penalty of six (6) months and one (1) day, as minimum, to six (6) years of *prision correccional*, as maximum, and a fine of ₱5,000.00 for the second crime.

In convicting petitioners, the RTC found that "the evidence x x x of the prosecution is replete with situations and/or events to prove [petitioners'] guilt,"[66] namely: (*a*) Atienza requested Atibula to take out Volumes 260, 265 and 267 of the CA Original Decisions from the CA Reporter's Division, which the latter rejected despite offer of remuneration; (*b*) Volume 266 was subsequently discovered to be missing; (*c*) access to the missing volume appears to have been acquired by entering through an opening in the premises of the CA's Reporter's Division because the air conditioning unit occupying the space thereat was taken out for repair earlier; (*d*) Castro returned Volume 266 after its loss;[67] (*e*) Volume 266 bore badges of tampering evidenced by the "non-continuity of the front and the back cover flaps x x x and the pages of the book/volume differences in the cutting marks on the sides of the volume and the presence of artificial aging on [its] sides";[68] and (*f*) two (2) new documents which materially amended the original decision and resolution in the *Fernando* case were inserted in the said volume.[69] The RTC further added that the manner by which petitioners committed the felonious acts reveals a community of criminal design, and thereby held that conspiracy exists.[70]

Aggrieved, petitioners appealed their conviction to the CA.

The CA Ruling

In a Decision[71] dated November 28, 2008, the CA affirmed the RTC's judgment of conviction *in toto*. It held that while

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[66] *Id.* at 94.

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

[68] *Id.* at 95.

[69] *Id.* at 94.

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

[71] *Id.* at 42-61.

there is no direct evidence showing that the petitioners committed the crimes charged, the testimonies of Atibula and NBI Agent Atty. Daganzo with respect to what had transpired before and after Volume 266 was taken from its shelf, when viewed together with the other circumstances in the case, constitute circumstantial evidence which sufficiently point to the guilt of petitioners.[72] In addition, it found that Atienza's defenses were self-serving negative evidence which cannot outweigh the circumstantial evidence clearly establishing his participation,[73] adding too that while there was no proof of previous agreement between petitioners to unlawfully take Volume 266 out of the office of the CA Reporter's Division and falsify the subject documents, their conspiracy may be inferred from the fact that Castro was in possession of the missing Volume 266 which was eventually discovered to have been falsified.[74]

Undaunted, petitioners filed a motion for reconsideration[75] which was, however, denied in a Resolution[76] dated July 7, 2009, hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not petitioners' conviction for the crimes of Robbery and Falsification of Public Document should be upheld on account of the circumstantial evidence in this case proving their guilt beyond reasonable doubt.

The Court's Ruling

The petition is meritorious.

Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be

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[72] *Id.* at 57.

[73] *Id.* at 58.

[74] *Id.* at 59.

[75] CA *rollo*, pp. 249-256.

[76] *Rollo*, pp. 62-63.

inferred based on reason and common experience.[77] It is sufficient for conviction if: (*a*) there is more than one circumstance; (*b*) the facts from which the inferences are derived are proven; and (*c*) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Stated differently, the test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proven must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence.[78]

Applying these principles to the facts that appear on record, the Court finds that no sufficient circumstantial evidence was presented in this case to establish the elements of Robbery under Article 299(a)(1)[79] of the RPC and Falsification of Public Documents under Article 172(1) in relation to Article 171(6)[80] of the same code, or of petitioners' supposed conspiracy therefor. To this end, the Court examines the participation of and evidence

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[77] *People v. Ibañez*, G.R. No. 191752, June 10, 2013, 698 SCRA 161, 176.

[78] *People v. Lamsen*, G.R. No. 198338, February 20, 2013, 691 SCRA 498, 507.

[79] To convict the accused for Robbery under Article 299(a)(1) of the RPC, the following elements must be established:

(*a*) That the offender entered an inhabited place, *public building*, or edifice devoted to religious worship;

(*b*) That the entrance was effected *through an opening not intended for entrance or egress*; and

(*c*) That once inside the building, the offender took personal property belonging to another with intent to gain. (See Reyes, Luis B., *The Revised Penal Code Criminal Law*, Book Two, Articles 114-367, 18th Ed., 2012, p. 704.)

[80] The elements of Falsification of Public Documents by a Private Individual under Article 172(1) in relation to Article 171 of the RPC are:

against each petitioner and forthwith explains its reasons for reaching the foregoing conclusions.

A. The Participation of and Evidence Against Castro

Notwithstanding Castro's failure to refute the charges against him, the Court finds no evidence to link him to the commission of the crimes of Robbery and Falsification of Public Document, contrary to the conclusions reached by the RTC and concurred in by the CA. To begin with, it is essential to note that Castro's purported possession and eventual return of Volume 266 was only premised upon the statement of one Nelson de Castro (Nelson), *i.e.*, the Sinumpaang Salaysay[81] dated August 9, 1995, who averred that on May 18, 1995, at around 11:50 in the morning, Castro told him to pass by his office and there handed him a bag which, as it turned out, contained the missing Volume 266, *viz.*:[82]

Noong Mayo 18, 1995 bandang 11:50 ng tanghali ay tumawag sa telepono si ALFREDO CASTRO, ng Budget Division, at sinabihan ako na dumaan

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(*a*) That the offender is a private individual or a public officer or employee who did not take advantage of his official position;

(*b*) That he committed any of the acts of falsification enumerated in Article 171 of the RPC; and

(*c*) That the falsification was committed in a public, official or commercial document. (See *Panuncio v. People*, G.R. No. 165678, July 17, 2009, 593 SCRA 180, 189-190.)

Meanwhile, the elements of Falsification under Article 171(6) of the RPC are as follows:

(*a*) That there be an alteration (change) or intercalation (insertion) on a document;

(*b*) That it was made on a genuine document;

(*c*) That the alteration or intercalation has changed the meaning of the document; and

(*d*) That the changes made the document speak something false. (See *Tan, Jr. v. Matsuura*, G.R. Nos. 179003 and 195816, January 9, 2013, 688 SCRA 263, 280-281.)

[81] Records, pp. 323-324.

[82] *Id.* at 324.

sa kanyang opisina dahil mayroon daw siyang ibibigay para sa opisina namin. Pumunta po naman ako kaagad kay ALFREDO CASTRO sa opisina at iniabot sa akin ang isang bag na malaki kulay parang pink at may laman at sinabihan pa niya ako na buksan ko na lang daw ang bag pagdating sa opisina. Pagdating ko sa opisina ay tinawag ko si Mr. ATIBULA at doon ay binuksan naming dalawa ang bag. Nakita ko sa loob ang isang bagay na nakabalot sa isang gift wrap at ng buksan namin o alisin ang gift wrap ay ang Original Decisions, Volume 266 na nawawala mga ilang linggo na ang nakakaraan.

Nelson was not, however, presented before the RTC during trial, hence, was not subjected to any in-court examination. It is settled that while affidavits may be considered as public documents if they are acknowledged before a notary public (here, a public officer authorized to administer oaths), they are still classified as hearsay evidence unless the affiants themselves are placed on the witness stand to testify thereon and the adverse party is accorded the opportunity to cross-examine them.[83] With the prosecution's failure to present Nelson to affirm his statement that Castro caused the return of Volume 266,[84] the prosecution's evidence on the matter should be treated as hearsay and, thus, inadmissible to establish the truth or falsity of the relevant claims. Consequently, there exists no sufficient circumstantial evidence to prove Castro's guilt.

B. The Participation of and Evidence Against Atienza

In similar regard, the prosecution's evidence on the circumstances in this case do not sufficiently establish Atienza's guilt for the crimes of Robbery and Falsification of Public Document.

While records show that Atienza was positively identified by Atibula as having attempted to bribe him to take out **Volume 260** of the CA Original Decisions from the Reporter's Division,[85] the fact is that the alleged intercalation actually occurred in a

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[83] See *Republic v. Marcos-Manotoc*, G. R. No. 171701, February 8, 2012, 665 SCRA 367, 388.

[84] Records, p. 324.

[85] TSN, December 3, 2002, pp. 20-21.

different document, that is **Volume 266**. The discrepancy of accounts on the very subject matter of the crimes charged dilutes the strength of the evidence required to produce a conviction. At best, the bribery attempt may be deemed as a demonstration of interest on the part of Atienza over said subject matter and in this regard, constitutes proof of motive. However, it is well-established that mere proof of motive, no matter how strong, is not sufficient to support a conviction, most especially if there is no other reliable evidence from which it may reasonably be deduced that the accused was the malefactor.[86]

In fact, even if Atienza's bribery attempt is taken together with the other circumstance couched as a relevant link by the prosecution in this case – *i.e.*, his averred encounter with Atibula, on May 11, 1995, or two (2) days after the discovery of the loss of Volume 266, wherein the latter uttered "[*p*]*utang ina mo, Juaning, pinahirapan mo kami*"[87] – the Court still finds the evidence to be lacking. This allegation, even if proven as true, does not indicate that Atienza howsoever affirmed the taking or even the falsification of Volume 266. Clearly, the utterance was made by Atibula who did not bother to state Atienza's response thereto or any other subsequent action connected therewith so as to bolster a finding of guilt. Neither can this circumstance be properly linked to the act of Castro inviting Atibula to Atienza's party. It would be a stretch to conclude that this mere invitation, without any other proof of Castro's participation, was instrumental or, at the very least, reasonably connected to Atienza and his own alleged participation in the above-stated crimes.

In this relation, it may not be amiss to debunk the claim that petitioners conspired in this case. While direct proof is not essential to establish conspiracy as it may be inferred from the collective acts of the accused before, during and after the commission of the crime which point to a joint purpose, design,

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[86] *People v. Comesario*, 366 Phil. 62, 68 (1999).

[87] TSN, December 2, 2002, p. 14.

concerted action, and community of interests,[88] records are, however, bereft of any showing as to how the particular acts of petitioners figured into the common design of taking out the subject volume and inserting the falsified documents therein. Hence, the prosecution's theory of conspiracy does not deserve any merit.

All told, the prosecution has failed to show that the circumstances invoked constitute an unbroken chain of events which lead to a fair and reasonable conclusion that petitioners are, to the exclusion of the others, indeed the culprits. As such, their conviction, tested under the threshold of proof beyond reasonable doubt, was not warranted. To be sure, proof beyond reasonable doubt is the degree of proof that, after investigation of the whole record, produces moral certainty in an unprejudiced mind of the accused's culpability.[89] Such moral certainty is, however, lacking in this case due to the insufficiency of the circumstantial evidence presented.

C. Jurisdictional Defect: Falsification Case

Also, it bears mentioning that the RTC did not have jurisdiction to take cognizance of Criminal Case No. 01-197426 (*i.e.*, the falsification case) since Falsification of Public Document under Article 172(1)[90] of the RPC, which is punishable by *prision correccional* in its medium and maximum periods (or imprisonment for 2 years, 4 months and 1 day to 6 years[91]) and a fine of not more than ₱5,000.00, falls within the exclusive jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts pursuant to Section

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[88] *People v. Lamsen*, *supra* note 78, at 508.

[89] *People v. Bacus*, G.R. No. 60388, November 21, 1991, 204 SCRA 81, 93.

[90] *Rollo*, p. 36-37.

[91] See Reyes, Luis B., *The Revised Penal Code Criminal Law*, Book Two, Articles 114-367, 18th Ed., 2012, p. 1081.

32(2)[92] of Batas Pambansa Bilang 129,[93] otherwise known as the "Judiciary Reorganization Act of 1980," as amended by RA 7691.[94] While petitioners raised this jurisdictional defect[95] for the first time in the present petition, they are not precluded from questioning the same. Indeed, jurisdiction over the subject matter is conferred only by the Constitution or the law and cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court. The rule is well-settled that lack of jurisdiction over the subject matter **may be raised at any stage of the proceedings**. Hence, questions of jurisdiction may be cognizable even if raised for the first time on appeal.[96]

D. A Final Word

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt.

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[92] SEC. 32. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases*. - Except in cases falling within the exclusive original jurisdiction of Regional Trial Court and of the Sandiganbayan, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

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(2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: Provided, however, That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.

[93] Entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUND THEREFOR, AND FOR OTHER PURPOSES."

[94] Entitled "AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA BLG. 129, OTHERWISE KNOWN AS THE 'JUDICIARY REORGANIZATION ACT OF 1980.'"

[95] *Rollo*, p. 36.

[96] See *Republic v. Bantigue Point Development Corporation*, G. R. No. 162322, March 14, 2012, 668 SCRA 158, 163-164.

The burden lies on the prosecution to overcome such presumption of innocence, failing which, the presumption of innocence prevails and the accused should be acquitted.[97] This, despite the fact that his innocence may be doubted, for a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness or even absence of defense. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction, as in this case. Courts should be guided by the principle that it would be better to set free ten men who might be probably guilty of the crime charged than to convict one innocent man for a crime he did not commit.[98] Accordingly, there being no circumstantial evidence sufficient to support a conviction, the Court hereby acquits petitioners, without prejudice, however, to any subsequent finding on their administrative liability in connection with the incidents in this case.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 28, 2008 of the Court of Appeals in CA-G.R. CR. No. 30650 is **REVERSED** and **SET ASIDE**. Petitioners Ricardo L. Atienza and Alfredo A. Castro are hereby **ACQUITTED** of the crimes of Robbery and Falsification of Public Document on the ground of reasonable doubt, without prejudice to any subsequent finding on their administrative liability in connection with the incidents in this case. The bail bonds posted for their provisional liberty are consequently cancelled and released.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Perez, JJ.,* concur.

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[97] *People v. Alejandro,* G.R. No. 176350, August 10, 2011, 655 SCRA 279, 287.

[98] *People v. Angus, Jr.,* G.R. No. 178778, August 3, 2010, 626 SCRA 503, 517-518.

SECOND DIVISION

[G.R. No. 190178. February 12, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FELIMON PATENTES *y* ZAMORA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS.— The elements necessary to sustain a conviction for rape are: (1) the accused had carnal knowledge of the victim; and (2) said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

2. ID.; ID.; NEGATED BY THE TOTALLY UNCHARACTERISTIC REACTION OF THE VICTIM AFTER THE ALLEGED RAPE.— Behavioral psychology teaches us that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted by a shocking incident as the workings of the human mind when placed under emotional stress are unpredictable. x x x The conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge of rape. In the case at bar, the actuations of AAA after the alleged rape is totally uncharacteristic of one who has been raped. It is contrary to normal human behavior for AAA to willingly go with her abuser's mother, and worse, to live with her abuser's entire family in one roof for eight (8) days *sans* any attempt to escape. It goes against the grain of human experience for a woman who has been robbed of her honor and chastity not to seize an opportunity to escape from the clutches of her malefactor. Instead of escaping from her abuser, AAA visited appellant's neighbor. Even if AAA had several opportunities to share her ordeal to be rescued by her friend, Wilma, AAA inexplicably failed and instead described the details of her marital plans. What is truly exceptional, however, is the testimony of AAA that she visited her grandmother during the period of her alleged abduction.

3. ID.; ID.; GUIDING PRINCIPLES.— In reviewing rape cases, the Court is guided by the following principles: (1) to accuse a man of rape is easy, but to disprove the accusation is difficult, though the accused may be innocent; (2) inasmuch as only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and should not be allowed to draw strength from the weakness of the evidence for the defense. So long as the private complainant's testimony meets the test of credibility, the accused may be convicted on the basis thereof.

4. ID.; ID.; NEGATED BY THE ABSENCE OF INJURIES CONTRARY TO THE ALLEGATION OF THE VICTIM.— Absence of external signs or physical injuries does not negate the commission of rape since proof of injuries is not an essential element of the crime. And, it is also a precept that physical evidence is of the highest order and speaks more eloquently than all witnesses put together. In the case at bar, the prosecution failed to present any scintilla of proof to support its claim. In fact, contrary to the prosecution's claim that AAA was dragged, tied, mauled, slapped and boxed, the medical certificate revealed no telltale sign of the prosecution's allegations. It has to be noted that the medical examination was conducted the day after AAA's supposed escape from appellant. As shown by the medical certificate, AAA had no external signs of physical injuries, save for a kiss mark.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY MUST BE COMPATIBLE WITH HUMAN CHARACTER.— The time-honored test in determining the value of the testimony of a witness is its compatibility with human knowledge, observation and common experience of man. Thus, whatever is repugnant to the standards of human knowledge, observation and experience becomes incredible and must lie outside judicial cognizance. As culled from the records, AAA lived with appellant's family for eight (8) days – in the same house where appellant's parents, sister, brother-in-law, nephews and nieces also lived. AAA even called appellant's mother, "*mama*." As argued by the defense, "the members of the appellant's family could have noticed that she was being forced and raped by the accused if the accusations were really true." Indeed, it is incompatible with human experience to keep a sex

slave for eight (8) days in a house where the abuser's entire family, including the abuser's minor nephews and nieces live.

6. ID.; ID.; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; NOT ESTABLISHED IN CASE AT BAR.— A conviction in a criminal case must be supported by proof beyond reasonable doubt, which means a moral certainty that the accused is guilty; the burden of proof rests upon the prosecution. In the case at bar, the prosecution has failed to discharge its burden of establishing with moral certainty the truthfulness of the charge that appellant had carnal knowledge of AAA against her will using threats, force or intimidation. The testimony of the offended party in crimes against chastity should not be received with precipitate credulity for the charge can easily be concocted. Courts should be wary of giving undue credibility to a claim of rape, especially where the sole evidence comes from an alleged victim whose charge is not corroborated and whose conduct during and after the rape is open to conflicting interpretations. While judges ought to be cognizant of the anguish and humiliation that a rape victim undergoes as she seeks justice, they should equally bear in mind that their responsibility is to render justice based on the law. The numerous inconsistencies in the testimony of private complainant have created reasonable doubt in Our mind. In view of the foregoing considerations, the presumption of innocence in favor of appellant must be upheld considering that the evidence brought forth in trial falls short of the quantum of proof to support a conviction.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

The peculiar nature of rape is that conviction or acquittal depends almost entirely upon the word of the private complainant because it is essentially committed in relative isolation or even

in secrecy, and it is usually only the victim who can testify of the unconsented coitus. Thus, the long standing rule is that when an alleged victim of rape says she was violated, she says in effect all that is necessary to show that rape has indeed been committed. Since the participants are usually the only witnesses in crimes of this nature and the accused's conviction or acquittal virtually depends on the private complainant's testimony, it must be received with utmost caution. It is then incumbent upon the trial court to be very scrupulous in ascertaining the credibility of the victim's testimony. Judges must free themselves of the natural tendency to be overprotective of every woman claiming to have been sexually abused and demanding punishment for the abuser. While they ought to be cognizant of the anguish and humiliation the rape victim goes through as she demands justice, judges should equally bear in mind that their responsibility is to render justice according to law.[1]

Before Us is an appeal from the Decision[2] of the Court of Appeals affirming with modification the Decision[3] of the Regional Trial Court, finding appellant guilty beyond reasonable doubt of the crime of Forcible Abduction with Rape and sentencing him to suffer the penalty of *reclusion perpetua.*

The present case involves eight (8) sets of Information for Forcible Abduction with Rape filed by private complainant ("AAA") against appellant, Felimon Patentes.

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[1] *People v. Macapanpan*, 449 Phil. 87-89 (2003) citing *People v. Alitagtag*, 368 Phil. 637, 647 (1999); *People v. Baltazar*, 385 Phil. 1023, 1031 (2000); *People v. Dumaguing*, 394 Phil. 93, 103 (2000); *People v. Gallo*, 348 Phil. 640, 665 (1998); *People v. Babera*, 388 Phil. 44, 53 (2000); *People v. Alvario*, 341 Phil. 526, 538-539 (1997).

[2] Penned by Associate Justice Romulo V. Borja, with Associate Justices Jane Aurora C. Lantion and Edgardo T. Lloren concurring, Court of Appeals, Twenty First Division, Cagayan de Oro, CA-G.R. CR-H.C. No. 00062; CA *rollo*, p.159-187.

[3] Penned by Presiding Judge Jesus V. Quitain, promulgated on 7 March 2005, *People v. Felimon Patentes*, Crim. Case No. 42,786-793-99, Regional Trial Court, Branch 15, Davao City. Records, pp. 129-144.

The Prosecution's Case

On 5 December 1998, at about 11:00 a.m., AAA boarded a bus for Bansalan, Davao City, to visit and bring medicines to her sick grandmother. While seated at the rear portion of the bus, appellant suddenly sat next to her. It was the second time AAA met appellant; the first time was on 4 December 1998, when appellant persistently courted her. She only knew appellant as he was a friend of her brother.

After a brief conversation, appellant suddenly showed her his bolo, covered by a red scabbard tucked in his right side while he held a red steel pipe with Arabic markings, which he used to threaten to kill AAA should AAA disobey him. Appellant then accompanied AAA to her grandmother's place and returned to Davao City proper by bus. As they walked around, appellant placed his right hand on AAA's shoulder. Appellant also held AAA's right hand, which covers her mouth with a handkerchief.

Upon reaching Davao City, they rode a *jeepney* to Sasa and alighted at a nearby convenience store. Upon arrival, a man gave something to appellant, which he immediately placed inside his pocket. Appellant then brought AAA to his house in Hacienda Heights, Davao City, where his parents, sister, brother-in-law, nephews and nieces live.

Upon entering the house, appellant dragged AAA to a room upstairs and tied her to a sewing machine. Appellant then started to smoke something, which he also forced AAA to inhale, causing AAA to feel light, weak and dizzy. This prevented AAA from fighting back as appellant removed AAA's clothes. Doffed of his own clothes, appellant mounted her and inserted his penis into her vagina.

The following day, 6 December 1998, appellant again forced AAA to inhale the smoke from his cigarette, causing her to feel weak and dizzy as appellant had carnal knowledge of AAA.

On 7 December 1998, appellant again had carnal knowledge of AAA using threats, force and intimidation, causing bruises on AAA's arms.

On 8 December 1998, while appellant was sleeping beside AAA, AAA slowly got up to escape. However, AAA's attempt, while feeble, woke up appellant. Appellant then punched her in the stomach, causing AAA to lose consciousness. When AAA gained a little strength, appellant again mauled her and raped her again.

On 9 December 1998, after AAA took a bath, appellant raped AAA while pointing a bolo to her neck.

On 10, 11 and 12 December 1998, appellant raped AAA while threatening her with bodily harm. He also threatened to kill her family, in case she tells anyone of her ordeal.

On 13 December 1998, to free herself from her predicament, AAA convinced appellant that she will marry him. Appellant agreed. Appellant's mother accompanied AAA to the latter's house to discuss the marital plans with AAA's family. Surprised by the marital plans, AAA's mother asked for a private moment with AAA. In their conversation, AAA confessed how appellant forcibly took her to his house on 5 December 1998 and raped her for more than a week. AAA's mother then accompanied AAA to report her ordeal to the police, where AAA was examined by a doctor, Dr. Samuel Cruz, the City Health Officer of Davao City.

Dr. Cruz testified that he examined AAA. In his report, he noted the following observations about AAA: (1) contusion on the breast caused by a kiss mark; (2) hymen was intact and can readily admit a normal-sized erect male penis without sustaining any injury; and (3) vaginal canal was negative for spermatozoa. Dr. Cruz also added that he cannot tell whether it was AAA's first sexual intercourse as the vagina was not injured but had healed lacerations.

The Accused-Appellant's Defense

On 5 December 1998, pursuant to their previous agreement, appellant accompanied AAA to Bansalan to visit and bring medicines to AAA's grandmother. After going around Davao City, they went to his house at about 7:00 p.m. Appellant then

offered to bring AAA to her house but the latter refused, insisting that she wanted to live with appellant because she was fed up with her mother, who often called her "*buntog*" or prostitute.

AAA stayed in appellant's house together with the latter's parents, sister, brother-in-law, nephews and nieces. AAA slept in the same room with appellant and had consented sexual intercourse. Throughout AAA's stay, she was free to roam around the house and even helped in the household chores. Pursuant to their marital plans, AAA's grandfather went to appellant's house on 7 December 1998. As a result, they agreed to set the wedding date on 27 May 1999. Appellant's mother also went to AAA's house to discuss the marital plans on 14 December 1998. However, AAA's mother rejected the marriage proposal because of appellant's social standing.

Leonora Gerondio (Gerondio), appellant's neighbor, testified that she first met AAA in appellant's house on 5 December 1998. The following day, Gerondio again saw AAA when she went to appellant's house. Appellant told her that he will marry AAA. Since then, Gerondio saw AAA everyday from 7 to 11 December 1998, cleaning the surroundings, doing the laundry, and walking around the vicinity. AAA even visited her house and talked about AAA and appellant's marital plans. In her observation, AAA and appellant acted like a couple. Gerondio also accompanied appellant's mother to AAA's house to discuss AAA and appellant's marital plans. However, AAA's mother rejected the marriage proposal.

Wilma Enriquez (Enriquez), a common friend of AAA and appellant, testified that between 5 to 12 December 1998, she went twice to appellant's house upon AAA's invitation to talk about the couple's marital plans.

During trial, the prosecution presented the following witnesses: (1) AAA, private complainant herself; (2) Dr. Samuel Cruz; (3) PO1 Lennie Ronquillo; (4) private complainant's mother; and (5) Julie Dayaday.

On the other hand, the defense presented: (1) Felimon Patentes, accused-appellant himself; (2) Leonora Gerondio; (3) Wilma Enriquez; and (4) Francisca Patentes.

After trial, the lower court found appellant guilty beyond reasonable doubt of one (1) count of Forcible Abduction with Rape and seven (7) counts of Rape. The dispositive portion of the Decision reads:

WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, Felimon Patentes a.k.a. Arnold Patentes is hereby sentenced as follows:

1.	Criminal Case No. 42,786-99	- *Reclusion Perpetua*
2.	Criminal Case No. 42,787-99	- *Reclusion Perpetua*
3.	Criminal Case No. 42,788-99	- *Reclusion Perpetua*
4.	Criminal Case No. 42,789-99	- *Reclusion Perpetua*
5.	Criminal Case No. 42,790-99	- *Reclusion Perpetua*
6.	Criminal Case No. 42,791-99	- *Reclusion Perpetua*
7.	Criminal Case No. 42,792-99	- *Reclusion Perpetua*
8.	Criminal Case No. 42,793-99	- *Reclusion Perpetua*

The accused shall indemnify AAA Thirty Thousand Pesos (₱30,000.00) in each of the eight cases for a total of Two Hundred Forty Thousand Pesos (₱240,000.00).

SO ORDERED.[4]

Aggrieved, appellant elevated the case to the Court of Appeals. The appellate court affirmed the decision of the trial court with modification. The dispositive portion of the Decision reads:

WHEREFORE, the assailed decision is AFFIRMED as to the conviction of appellant FELIMON PATENTES for one (1) count of Forcible Abduction with Rape and seven (7) counts of eight (8) counts of Rape and as to the imposition upon him of the penalty of *reclusion perpetua* for each of the eight (8) offenses. His civil liability, however, is hereby MODIFIED as follows:

Appellant FELIMON PATENTES is hereby directed to pay the following amounts:

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[4] *Id.* at 144.

1. ₱50,000.00 each as civil indemnity for one (1) count of Forcible Abduction with Rape and seven (7) counts of Rape or a total of ₱400,000.00;

2. ₱75,000.00 each as moral damages for one (1) count of Forcible Abduction with Rape and seven (7) counts of Rape or a total of ₱600,000.00; and

3. ₱25,000.00 each as temperate damages for one (1) count of Forcible Abduction with Rape and seven (7) counts of Rape or a total of ₱200,000.00.

SO ORDERED.[5]

The appellate court affirmed the findings of the trial court on the matter of credibility of the witnesses for the prosecution. According to the appellate court, "AAA's account of her ordeal in the hands of appellant was straightforward, firm, candid and consistent. Notwithstanding the rigid, lengthy and rigorous cross-examination by the defense, AAA remained steadfast in her narration of the details of her harrowing experience. A thorough reading of the transcript shows that AAA's testimony bears the earmarks of truth and credibility."[6]

Hence, this appeal.

The elements necessary to sustain a conviction for rape are: (1) the accused had carnal knowledge of the victim; and (2) said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[7] In the case at bar, appellant never denied having carnal knowledge of AAA. The only matter, thus, to be resolved by this Court is whether appellant had carnal knowledge of AAA against her will using threats, force or intimidation, or that AAA was deprived of reason or otherwise unconscious, or was under 12 years of age or is demented.

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[5] CA *rollo*, p. 186.

[6] *Id.* at 179.

[7] *People v. Bongat*, G. R. No. 184170, 2 February 2011, 641 SCRA 496, 505.

Appellant argues that if AAA really was raped for more than an entire week, it is perplexing why she did not escape, or even seek the help of the neighbors despite several opportunities to do so.[8] Appellant further alleges that AAA's failure to escape and her helping in the household chores in appellant's house prove that she was not raped and that they had consensual sexual intercourse.[9]

About this position, the appellate court noted and reasoned that, "appellant threatened AAA with harm in the event that she told anyone of what happened between them. The lingering fear instilled upon AAA is understandable considering that appellant was always armed with a bolo and was constantly showing it to AAA. The possibility of him making good his threat was not at all remote and the fear for her life remained palpable."[10]

Behavioral psychology teaches us that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted by a shocking incident as the workings of the human mind when placed under emotional stress are unpredictable.[11] Nevertheless, the Court must be guided by established principles.

In reviewing rape cases, the Court is guided by the following principles: (1) to accuse a man of rape is easy, but to disprove the accusation is difficult, though the accused may be innocent; (2) inasmuch as only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and should not be allowed to draw strength from the weakness of the evidence

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[8] CA *rollo*, p. 101.

[9] *Id.* at 93.

[10] *Id.* at 181.

[11] *People v. Mariano*, G.R. No. 168693, 19 June 2009, 590 SCRA 74, 90.

for the defense.[12] So long as the private complainant's testimony meets the test of credibility, the accused may be convicted on the basis thereof.[13]

Following these legal precepts, AAA's testimony, placed side by side with the prosecution's evidence, must stand the test of credibility.

1. Absence of external signs or physical injuries does not negate the commission of rape since proof of injuries is not an essential element of the crime.[14] And, it is also a precept that physical evidence is of the highest order and speaks more eloquently than all witnesses put together.[15] In the case at bar, the prosecution failed to present any scintilla of proof to support its claim. In fact, contrary to the prosecution's claim that AAA was dragged, tied, mauled, slapped and boxed, the medical certificate revealed no telltale sign of the prosecution's allegations. It has to be noted that the medical examination was conducted the day after AAA's supposed escape from appellant. As shown by the medical certificate, AAA had no external signs of physical injuries, save for a kiss mark, to wit: [16]

EXTRAGENITAL PHYSICAL INJURY:

Contusion, reddish purple, breast, right side, lower-inner quadrant, 2.0x1.0 cm. xxx

CONCLUSIONS:

1. The above physical injury was noted on the body of the subject, age of which is consistent with the alleged date of infliction.

2. That under normal conditions without subsequent complications and unless a deeper involvement might be present but which is not clinically apparent at the time of examination, said injury

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[12] *People v. Marquez*, GR Nos. 137408-10, 8 December 2000, 347 SCRA 510, 517.

[13] *Id.*

[14] *People v. Freta*, 406 Phil. 853, 862 (2001).

[15] *People v. Bardaje*, 187 Phil. 735, 744 (1980).

[16] Exhibit "B", records, p. 7.

will require medical attendance of not more than seven (7) days from date of infliction.

3. Hymen intact and its orifice, wide as to allow complete penetration by an average-sized male organ in erection without causing hymenal injury. [17]

2. The time-honored test in determining the value of the testimony of a witness is its compatibility with human knowledge, observation and common experience of man.[18] Thus, whatever is repugnant to the standards of human knowledge, observation and experience becomes incredible and must lie outside judicial cognizance.[19]

As culled from the records, AAA lived with appellant's family for eight (8) days – in the same house where appellant's parents, sister, brother-in-law, nephews and nieces also lived. AAA even called appellant's mother, "*mama*." As argued by the defense, "the members of the appellant's family could have noticed that she was being forced and raped by the accused if the accusations were really true."[20] Indeed, it is incompatible with human experience to keep a sex slave for eight (8) days in a house where the abuser's entire family, including the abuser's minor nephews and nieces live.

When appellant and AAA arrived in the former's house, they were greeted by appellant's father. If AAA's account were true that appellant dragged her to a room upstairs and then tied her to a sewing machine, appellant's father could have noticed and reacted to the obvious violence. To say the least, he would have talked to the appellant about the deed. Instead, and incredibly, appellant's mother went to AAA's house to propose marriage – contrary to the common experience.

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[17] *Id.*

[18] *People v. De Guzman*, G.R. No. 192250, 11 July 2012, 676 SCRA 347, 360.

[19] *Id.*

[20] CA *rollo*, p. 103.

Contrary to the prosecution's claim that AAA only saw appellant on 4 December 1998, a day before the alleged commission of the crime, it was stipulated that AAA knew appellant as appellant was a neighbor and friend of AAA's brother.[21] Furthermore, appellant's mother was the midwife who assisted AAA's housemaid in giving birth.[22] Lastly, AAA and appellant have a common friend, Enriquez, who testified that she saw the two in appellant's house, through AAA's invitation.[23] The TSN reflects the inconsistencies in AAA's testimony:[24]

Q: Do you know that his mother is a midwife?
A: **No, Sir.**
Because she helped in the delivery of our housemaid.

Q: When did your housemaid give birth?
A: **When I went to Bansalan on December 5 I passed by the house she was about to deliver and I saw the mother of the accused that's the time I came to know his mother.**

Q: **Is it not that your stepfather even went to the house where you stayed?**
A: **No, sir.**

Q: You will deny that?
A: I did not see him.

xxx x x x xxx

Q: Is it not you said you were being locked?
A: **I was locked at the door when my father arrived.**
I do not know because he locked me at the room.
[Emphasis supplied]

For several days that AAA had been missing, which would have caused worry and anxiety among AAA's family members, AAA's father, instead of reporting the matter to police authorities,

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[21] Records, p. 13.

[22] TSN, 8 February 2000, p. 46.

[23] TSN, 9 December 2002, p. 3.

[24] TSN, 8 February 2000, pp. 46-47.

went to appellant's house to discuss AAA and appellant's marital plans on 7 December 1998.[25] Clearly, this is contrary to human logic and experience, and inconsistent with the prosecution's claim.

3. The conduct of the victim immediately following the alleged sexual assault is of utmost importance in establishing the truth or falsity of the charge of rape.[26] In the case at bar, the actuations of AAA after the alleged rape is totally uncharacteristic of one who has been raped. It is contrary to normal human behavior for AAA to willingly go with her abuser's mother, and worse, to live with her abuser's entire family in one roof for eight (8) days *sans* any attempt to escape.

It goes against the grain of human experience for a woman who has been robbed of her honor and chastity not to seize an opportunity to escape from the clutches of her malefactor.[27] Instead of escaping from her abuser, AAA visited appellant's neighbor.[28] Even if AAA had several opportunities to share her ordeal to be rescued by her friend, Wilma, AAA inexplicably failed and instead described the details of her marital plans. What is truly exceptional, however, is the testimony of AAA that she visited her grandmother during the period of her alleged abduction. Despite inconsistencies in her testimony as shown in the TSN, AAA admitted the visit to her grandmother:[29]

Q: So you did not proceed to your grandmother's house, where is the house of your grandmother?
A: Km. 81.

Q: Near the Dulo?
A: A bit farther of Dulo.

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[25] TSN, 8 February 2000, pp. 46-47.

[26] *People v. Sapinoso*, 385 Phil. 374, 387 (2000); *People v. Moreno*, 378 Phil. 951, 969 (1999).

[27] *People v. Macapanpan*, *supra* note 1, at 106; citing *People v. Malbog*, 396 Phil. 784 (2000).

[28] TSN, 20 June 2001, p. 4.

[29] TSN, 8 February 2000, p. 37

Q: You rode in a jeep and the driver is your cousin?
A: **No sir we rode (sic) pedicab going to my grandmother's place.**

Q: There were no people?
A: We are used to ride (sic) pedicab.

Q: **So you rode a pedicab at that time?**
A: **No, Sir.** [Emphasis supplied]

We are mindful that appellant's bare invocation of the sweetheart theory cannot alone stand. It must be corroborated by documentary, testimonial, or other evidence. Usually, these are letters, notes, photos, mementos, or credible testimonies of those who know the lovers.[30] There is such corroboration in this case. To support its sweetheart theory, the defense presented appellant and AAA's common friend, Enriquez, who attested to the veracity of appellant's claim:[31]

Q: When you arrived at their house did you see the complainant AAA?
A: Yes, sir.

Q: Were you able to talk to her?
A: Yes, sir.

Q: Can you tell the court what was the subject of your conversation?
A: **She told me that she and Felimon Patentes are getting married, saying where they will live and that they will go into the buy and sell business.**

Q: **Did you notice AAA to be happy with Felimon Patentes?**
A: **Yes, sir.**

Q: And the second time you went to their place do you remember what was the subject of your conversation?
A: **Regarding their plan of getting married.** [Emphasis supplied]

Appellant's neighbor, Gerondio, corroborated the testimony:[32]

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[30] *People v. Jimenez*, 362 Phil. 222, 233 (1999).

[31] TSN, 9 December 2002, pp. 3-4.

[32] TSN, 20 June 2001, pp. 2-4.

Q: Do you remember seeing the accused sometime on December 5, 1998?
A: Yes, sir.

Q: Where did you see him?
A: In their house, he just arrived.

Q: Was he alone?
A: He is with AAA.

x x x x x x x x x

Q: On the following day did you see again AAA?
A: Yes, sir.

Q: Where did you see her?
A: Inside their house, she was walking.

x x x x x x x x x

Q: When was that when you saw her?
A: The next day, December 6, 1998.

x x x x x x x x x

Q: On the succeeding days, from December 7 to 11 were you able to see AAA in the house of F[e]limon?
A: Yes, sir.

Q: Where did you see her?
A: In the house of the accused, F[e]limon.

Q: What was she doing?
A: **She was cleaning the surroundings of the house and did the laundry, and she was also going around.**

Q: When you said going around or *"suroy-suroy"* where did she go around?
A: She also went to our house.

Q: Were you able to talk to her personally?
A: Yes, sir.

x x x x x x x x x

Q: **What did you observe from them?**
A: **As if they are married.**

Q: **What were the actions that you saw in them?**
A: **They were loving with each other.**

Q: **What do you mean by loving?**
A: **They are close to each other, they joke, and F[e[limon would place his arm on the shoulder of AAA.** [Emphasis supplied]

A conviction in a criminal case must be supported by proof beyond reasonable doubt, which means a moral certainty that the accused is guilty; the burden of proof rests upon the prosecution.[33] In the case at bar, the prosecution has failed to discharge its burden of establishing with moral certainty the truthfulness of the charge that appellant had carnal knowledge of AAA against her will using threats, force or intimidation.

The testimony of the offended party in crimes against chastity should not be received with precipitate credulity for the charge can easily be concocted.[34] Courts should be wary of giving undue credibility to a claim of rape, especially where the sole evidence comes from an alleged victim whose charge is not corroborated and whose conduct during and after the rape is open to conflicting interpretations.[35] While judges ought to be cognizant of the anguish and humiliation that a rape victim undergoes as she seeks justice, they should equally bear in mind that their responsibility is to render justice based on the law.[36]

The numerous inconsistencies in the testimony of private complainant have created reasonable doubt in Our mind. In view of the foregoing considerations, the presumption of innocence in favor of appellant must be upheld considering that the evidence brought forth in trial falls short of the quantum of proof to support a conviction.[37]

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[33] Section 2, Rule 133, Revised Rules on Evidence; *People v. Palma Gil*, 348 Phil. 608, 626 (1998).

[34] *People v. Gilbero*, 425 Phil. 241, 249 (2002).

[35] *People v. Medel*, 350 Phil. 208, 226 (1998).

[36] *People v. Alvario*, 341 Phil. 526, 538-539 (1997).

[37] *People v. Villaflores*, 422 Phil. 776, 792 (2001), citing *People v. Bravo*, 376 Phil. 931, 944 (1999).

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals, finding appellant **FELIMON PATENTES *y* ZAMORA** guilty beyond reasonable doubt of Forcible Abduction with Rape, is **REVERSED** and **SET ASIDE**. **FELIMON PATENTES *y* ZAMORA** is **ACQUITTED** on the ground of reasonable doubt. His immediate release from confinement is hereby ordered unless he is being detained for some other charge.

SO ORDERED.

Carpio, Brion, del Castillo, and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 199268. February 12, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AURELIO JASTIVA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; HAVING CARNAL KNOWLEDGE OF A WOMAN THROUGH FORCE, THREAT OR INTIMIDATION; ELEMENTS.— Article 266-A of the Revised Penal Code defines the crime of rape, *viz*: ART. 266-A. *Rape, When and How Committed.* – Rape is committed – 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat or intimidation[.] From the above-quoted provision of law, the elements of rape (under paragraph 1, subparagraph a) are as follows: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force, (threat) or intimidation.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— [C]redibility of a witness is the sole province of the RTC being the trial court in this case. Basic is the rule that the findings of fact of the trial court on matters of credibility of witnesses are generally conclusive on this Court, which is not a trier of facts. Such conclusiveness derives from the trial court's having the first-hand opportunity to observe the demeanor and manner of the victim when he/she testified at the trial. Undeniably, the calibration of the testimony of a witness, and the assessment of the probative weight thereof, are virtually left, almost entirely, to the trial court which has the opportunity to observe the demeanor of the witness at the stand. Unless there are substantial matters that might have been overlooked or discarded, generally, the findings of the trial court as to the credibility of a witness will not be disturbed on appeal. The foregoing is especially true when such findings are affirmed by the appellate court.

3. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES.— [T]he three guiding principles in rape prosecutions [are]: (1) an accusation of rape is easy to make, and difficult to prove, but it is even more difficult to disprove; (2) bearing in mind the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost care and caution; and (3) the evidence of the prosecution must stand or fall on its own merits; and cannot draw strength from the weakness of the defense. So, when a woman says that she has been raped, she says in effect all that is necessary to show that the crime of rape was committed. In a long line of cases, this Court has held that if the testimony of the rape victim is accurate and credible, a conviction for rape may issue upon the sole basis of the victim's testimony. This is because no decent and sensible woman will publicly admit to being raped and, thus, run the risk of public contempt unless she is, in fact, a rape victim.

4. ID.; ID.; RAPE THROUGH FORCE, THREAT OR INTIMIDATION; NOT NEGATED BY THE VICTIM'S FAILURE TO SHOUT FOR HELP OR STRUGGLE AGAINST HER ATTACKER.— It does not follow that because AAA failed to shout for help or struggle against her attacker means that she could not have been raped. The force, violence, or intimidation in rape is a relative term, depending not only on the age, size,

and strength of the parties but also on their relationship with each other. And physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety. Record disclose that in this case, AAA was already 67 years of age when she was raped in the dark by appellant Jastiva who was armed with a knife. Justifiably, a woman of such advanced age could only recoil in fear and succumb into submission. In any case, with such shocking and horrifying experience, it would not be reasonable to impose upon AAA any standard form of reaction. x x x More to the point, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused. Some may offer strong resistance while others may be too intimidated to offer any resistance at all, just like what happened in this case. Thus, the law does not impose a burden on the rape victim to prove resistance. What needs only to be proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim – which it did in the case at bar.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IDENTITY OF ACCUSED, SUFFICIENTLY ESTABLISHED.— [T]he circumstances after the commission of the rape testified to by AAA sufficed to establish the ability of the latter to identify appellant Jastiva as the perpetrator of the crime. Appellant Jastiva's assertions that the cover of darkness and lack of lighting inside the "*kamalig*" where the crime took place, utterly diminished AAA's ability to identify him or anyone for that matter, is downright specious. AAA never claimed to have seen her attacker inside the "*kamalig*." What AAA testified to was the fact that she saw appellant Jastiva when he walked past her by the open door of the "*kamalig*" and his face was finally illuminated by the moonlight. x x x [T]he RTC correctly held that "the Court is not disposed to doubt the evidenced ability of the complainant to identify her rapist especially because her familiarity of the latter could easily be strengthened by the fact that the accused is her neighbor living some 100 meters away from the crime scene."

6. ID.; ID.; ALIBI; REQUISITES.— [T]he categorical and positive identification of appellant Jastiva prevails over the latter's plain alibi and bare denial. x x x [F]or the defense of alibi to prosper,

the accused must prove the following: (*i*) that he was present at another place at the time of the perpetration of the crime; and (*ii*) that it was physically impossible for him to be at the scene of the crime during its commission. Physical impossibility involves the distance and the facility of access between the crime scene and the location of the accused when the crime was committed; the accused must demonstrate that he was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.

7. CRIMINAL LAW; RAPE; PROPER PENALTY.— Jastiva committed the crime of rape by having carnal knowledge of AAA using force and intimidation. Under Article 266-B of the Revised Penal Code, the proper penalty to be imposed is: Art. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. But the imposition of death penalty has been prohibited by Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines;" thus, the RTC, as affirmed by the Court of Appeals, properly imposed upon appellant Jastiva the penalty of *reclusion perpetua*. Relative to the award of damages, the RTC correctly awarded ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. Civil indemnity is in the nature of actual and compensatory damages, and is obligatory upon conviction of rape. As to moral damages, it is automatically awarded to rape victims without the necessity of proof, for it is assumed that they suffered moral injuries entitling them to such award. Similarly, the Court of Appeals fittingly imposed interest on all damages awarded to AAA, the private offended party, at the legal rate of six percent (6%) per annum from the date of the finality of this Court's decision in conformity with present jurisprudence. This Court notes, however, that both the RTC and Court of Appeals overlooked the award of exemplary damages. Being corrective in nature, exemplary damages can be awarded even in the absence of an aggravating circumstance if the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. Thus, this Court deems it necessary to modify the civil liability of appellant Jastiva to include exemplary damages for the

vindication of the sense of indignity and humiliation suffered by AAA, a woman of advanced age, and to set a public example, to serve as deterrent to those who abuse the elderly, and to protect the latter from sexual assaults.

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.*:

Before this Court is the final appeal[1] of Aurelio Jastiva from his conviction for the crime of rape in Criminal Case No. 12772, entitled "*People of the Philippines v. Aurelio Jastiva*," by the Regional Trial Court (RTC), Branch 9, in Dipolog City on September 1, 2009,[2] which the Court of Appeals affirmed with slight modification through its Decision[3] promulgated on August 31, 2011 in CA-G.R. CR.-H.C. No. 00754-MIN.

Gathered from the records of the case, the facts are as follows:

On September 29, 2004, appellant Jastiva was charged in the RTC with rape penalized under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended, under the following information:

That in the evening, on or about the 3rd day of August, (sic) 2004, in x x x, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the said accused, armed with a knife, by means of force and intimidation, did then and there willfully, unlawfully and feloniously

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[1] Ordinary Appeal under Rule 44 of the Rules of Court, as amended.

[2] Records, pp. 101-113; penned by Judge Yolinda C. Bautista.

[3] *Rollo*, pp. 4-22; penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Rodrigo F. Lim, Jr. and Pamela Ann Abella Maxino, concurring.

succeed in having sexual intercourse with one [AAA[4]], a 67-year-old married, against her will and without her consent.

CONTRARY TO LAW (Viol. of Art. 266-A of the Revised Penal Code).[5]

With the assistance of counsel, appellant Jastiva pleaded "*not guilty*" to the crime charged when he was arraigned on November 26, 2004.[6]

Thereafter, trial ensued.

The prosecution presented the following witnesses, namely (*i*) AAA,[7] the private offended party, 69 years old, married, a farmer, and a resident of Sitio WWW, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte; (*ii*) BBB,[8] the husband of AAA, 74 years old, a farmer, and a resident of Sitio WWW, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte; (*iii*) Dr. Domiciano Talaboc,[9] Municipal Health Officer, ZZZ Rural Health office, Zamboanga del Norte; (*iv*) Celedonio Paul T. Payla, Jr.,[10] Barangay Kagawad, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte; and (*v*) Police Officer (PO) 3 Alfredo Esmade,[11] Desk Officer, PNP Dapitan City, Zamboanga del Norte; and several pieces of documentary

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[4] Pursuant to *People v. Cabalquinto* (533 Phil. 703, 709 [2006]), the "Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her x x x, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed."

[5] Records, p. 1.

[6] *Id.* at 26; Per Certificate of Arraignment.

[7] TSN, September 5, 2006.

[8] TSN, May 9, 2007, pp. 6-13.

[9] TSN, November 28, 2006.

[10] TSN, March 19, 2007.

[11] TSN, May 9, 2007, pp. 2-6.

evidence,[12] specifically: (*i*) the Medical Certificate[13] of AAA dated August 5, 2004 issued by the Office of the Municipal Health Officer; (*ii*) the Barangay Blotter;[14] (*iii*) a Certification[15] of the Excerpt from the Record Book of Dapitan City Police Station; and (*iv*) the Affidavit[16] of BBB.

As summarized by the Court of Appeals, the prosecution tried to establish from the preceding enumerated testimonial and documentary pieces of evidence that –

> On August 3, 2004, then [67[17]]-year old AAA was drying corn in their small barn ("*kamalig*") in a farmland located at [Sitio XXX], Zamboanga del Norte, when her husband[,] BBB[,] left her alone. BBB spent that night in their permanent residence at [Sitio WWW] because their daughter has (sic) no companion.
>
> At about 11:00 x x x in the evening, AAA was fast asleep when a certain man she later identified as accused-appellant Aurelio Jastiva covered her mouth, threatened her with a knife and told her not to scream because he will have sexual intercourse with her. AAA grabbed accused-appellant's hand and felt the blade of the knife he held. Thereafter, accused-appellant removed AAA's underwear. However, he cannot proceed with his lewd design because his penis was not yet erected (sic), accused-appellant therefore toyed with AAA's sexual organ by licking it. Accused-appellant then made his way up and tried to suck AAA's tongue. The latter evaded her assaulter's sexual advances by closing her lips tightly and in the process wounded the same through her teeth. Once done, accused-appellant held his penis and inserted it to (sic) AAA's vagina. After fulfilling his sexual desire and before AAA could stand up, accused-appellant tapped AAA's shoulder and said "*Salamat*" (Thank [y]ou).

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[12] Records, pp. 58-59; Prosecution's Formal Offer of Evidence.

[13] *Id.* at 60; Exhibit "A" for the prosecution.

[14] *Id.* at 61; Exhibit "B" for the prosecution.

[15] *Id.* at 62; Exhibit "C" for the prosecution.

[16] *Id.* at 63; Exhibit "D" for the prosecution.

[17] Originally, the Court of Appeals quoted AAA's age to be 65 years at the time the crime was committed, however, upon review of the records of the case, AAA was actually 67 years old at the time.

AAA stood up and opened the door to let accused-appellant out. When the latter passed through (sic) AAA, it was then that the (sic) AAA clearly recognized, through the illumination of the moon, that it was their (sic) neighbor accused-appellant who abused her. Engulfed with fear, AAA immediately closed the door because she thought that accused-appellant might go (sic) back and kill her. AAA later learned that accused-appellant destroyed a particular rack in their kitchen to enter the small barn. AAA was no longer able to sleep after the incident.

At about 5:00 x x x in the morning of the next day, AAA relayed her ordeal to her neighbor Corazon Mokot and her husband BBB. The latter immediately told her that they will bring the matter to the attention of the authorities.

On August 5, 2004, they [AAA and BBB] went to the *Barangay* Hall of *Barangay* [YYY] to report the incident. *Barangay Kagawad* Celedonio Paul Payla, Jr., the officer-on-duty wrote a *barangay* blotter about the incident. On the same day, AAA was medically examined by Dr. Domiciano Talaboc, the Municipal Health Officer of the Municipality of [ZZZ]. The Medical Certificate dated August 5, 2004 revealed that AAA's labia majora and labia minora on both sides showed signs of irritation and are reddish in color, in addition to a partial separation of tissues noted between the labium. AAA's vaginal opening also showed signs of irritation and are (sic) reddish in color. The same also stated that AAA sustained multiple scratches at both her upper and lower lips.

On August 6, 2004, assisted by Police Inspector and Chief of Police of the Philippine National Police, [ZZZ] Police Station of Zamboanga del Norte, AAA filed a Complaint for Rape against accused-appellant. A warrant for the arrest of accused-appellant was subsequently issued and on August 29, 2004, accused-appellant was apprehended by the police authorities.[18] (Citations omitted.)

To counter the evidence summarized above, the defense offered the testimonies of the following witnesses: (*i*) Gloria Ordas (Ordas),[19] 48 years old, housekeeper, and a resident of Villahermosa, Municipality of ZZZ, Zamboanga del Norte; (*ii*)

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[18] *Rollo*, pp. 5-7.

[19] TSN, September 3, 2007.

Vilma Jastiva (Vilma),[20] the common-law wife of appellant Jastiva, 56 years old, laundry woman, and a resident of Sitio XXX, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte; (*iii*) Merlyn Jastiva (Merlyn),[21] the daughter of appellant Jastiva, 25 years old, and also a resident of Sitio XXX, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte; and (*iv*) appellant Jastiva,[22] 54 years old, and a resident of Sitio XXX, Poblacion YYY, Municipality of ZZZ, Zamboanga del Norte. And the defense formally offered a single documentary evidence – the Medical Certificate of AAA.

According to the defense, appellant Jastiva, 49 years old at the time of the incident, could not have committed the crime because on the date and time thereof, he was at home sleeping. Likewise, as digested by the Court of Appeals, the testimonies of appellant Jastiva, Vilma and Merlyn, common-law wife and daughter of appellant Jastiva, respectively, as well as Ordas, a friend of Merlyn, were offered to show that –

> On August 3, 2004, accused-appellant Aurelio Jastiva was in their house at the Municipality of [ZZZ], Zamboanga del Norte. He was then with his wife Vilma and his youngest child. The Jastivas had a visitor that time, a certain Gloria Ordas, the friend of accused-appellant's daughter, Merlyn.
>
> At around 11:00 x x x in the evening, the time the alleged incident happened, accused-appellant was fast asleep with his wife. This fact was corroborated by Vilma.
>
> Merlyn also corroborated his father's story that he was sleeping at the time of the incident because their house has only one door and nobody can go out without waking the other members of the family. Merlyn narrated that his father could not have left the house unnoticed because their feet were blocking the door. Merlyn does not remember waking on the day of the incident. Thus, accused-appellant could not have gone outside their house. This fact was also confirmed by Gloria who visited and eventually spent the night

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[20] TSN, December 5, 2007.

[21] TSN, October 29, 2008.

[22] TSN, February 17, 2009.

with the Jastivas on August 3, 2004. Gloria recounted that she was sleepless that night and she clearly saw that accused-appellant was sleeping at around 11:00 x x x on that evening.[23] (Citations omitted.)

After trial and upon evaluation of the evidence on record, the RTC found appellant Jastiva guilty of the crime charged. The dispositive of the Decision dated and promulgated on September 1, 2009 states:

> ***WHEREFORE***, premised in the foregoing, judgment is hereby rendered finding the accused Aurelio Jastiva GUILTY beyond reasonable doubt of the crime of rape penalized under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended. Accordingly, he is hereby sentenced to serve the determinate penalty of *reclusion perpetua*. In view of his conviction and without need of further proof, he is also ordered to pay complainant [AAA] the amount of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity and FIFTY THOUSAND PESOS (₱50,000.00) as moral damages.
>
> Being a detention prisoner, Aurelio Jastiva is entitled to the full benefit of his preventive detention.[24] (Citations omitted.)

Aggrieved, appellant Jastiva questioned his conviction to the Court of Appeals grounded on the following: (***i***) the RTC "gravely erred by giving weight to the testimony of [AAA] that she recognized the accused-appellant when he went out of the house of [AAA];" and (***ii***) the RTC "gravely erred in convicting [the] accused-appellant despite the failure of the prosecution to prove his guilt beyond reasonable doubt."[25]

In his Brief,[26] appellant Jastiva particularly argued the following points, (***i***) that "[t]he identity of the appellant was not established," x x x "considering that the private complainant herself admitted that the room where the alleged incident happened was dark"; (***ii***) that "the witness could not possibly identify the real culprit" because she testified that "she only saw his back, albeit the

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[23] *Rollo,* pp. 7-8.

[24] Records, pp. 112-113.

[25] CA *rollo,* p. 10.

[26] *Id.* at 9-24.

alleged moonlight;" (***iii***) that "private complainant even opened the door for her rapist to let the latter go out of her house x x x private complainant had all the opportunity to shout for help but she did not do so"; (***iv***) that the private complainant's two conflicting statements – in her sworn affidavit that appellant Jastiva removed her panty and inserted his penis in her vagina *vis-à-vis* her testimony in open court that appellant Jastiva removed her panty but first sucked her vagina to make his penis erect, and then inserted his penis into her vagina – seriously cast doubts on her credibility; (***v***) that "[t]he testimony of the private complainant failed to show any force or intimidation exerted upon her person" as appellant Jastiva was still able to engage in sexual foreplay with leisure prior to the actual sexual intercourse; (***vi***) that "[t]he absence of rape is further bolstered by the medial (sic) findings x x x the medical certificate states, among other things, that no sign of irritation at the external genitalia; external genitalia appeared multiparous with corrugated skin folds x x x"; and (***vii***) that his defense of alibi and denial should be given great weight in view of the weakness of the evidence of the prosecution.[27]

The Office of the Solicitor General (OSG) for appellee People of the Philippines, rebutted the foregoing points with the two basic counter-arguments: (***i***) that "[b]ased on the x x x testimonies [of AAA], there is no doubt that the victim positively identified appellant as the individual who raped her on the night of August 3, 2004 x x x positive identification, when categorical and consistent and without ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial";[28] and (***ii***) that "[t]he act of holding a knife is by itself strongly suggestive of force or at least intimidation, and threatening the victim with a knife is sufficient to bring her into submission x x x. Inasmuch as intimidation is addressed to the victim's mind, response thereto and the effect thereof cannot be measured by any hard and fast rule such that it must be viewed in the context of the victim's perception and judgment not only at the time of the commission

[27] *Id.* at 14-23.

[28] *Id.* at 60.

of the crime but also at the time immediately thereafter. Physical resistance is immaterial in a rape case when the victim is sufficiently intimidated by her assailant and submits against her will because of fear for her life or personal safety x x x."[29]

On August 31, 2011, the Court of Appeals promulgated its Decision affirming the decision of the RTC albeit with a slight modification, *i.e.*, that appellant Jastiva be further required to pay interest on all damages awarded to AAA. The *fallo* of the Court of Appeals decision reads:

> **WHEREFORE**, the appealed decision is **AFFIRMED** in all respects except that accused-appellant Aurelio Jastiva is further ordered to pay AAA interest on all damages awarded at the legal rate of 6% per annum from the finality of this Decision.[30] (Citation omitted.)

In affirming the conviction of appellant Jastiva, the Court of Appeals held that the elements of the crime of rape as defined under paragraph 1 of Article 266-A of the Revised Penal Code were established by the prosecution, that is, "[a]ccused-appellant had carnal knowledge of AAA through intimidation as shown by her sordid experience x x x"[31] coupled with the positive identification of appellant Jastiva by AAA as her tormentor. On the issue that the RTC erred in giving weight to AAA's testimony that she saw her assailant's face; hence, she could positively identify appellant Jastiva, the Court of Appeals stated that –

> Accused-appellant however[,] maintains that the trial court erred in heavily relying on AAA's positive identification because her testimony on this matter is dubious considering that AAA herself admitted that the small barn, where the alleged incident happened, was dark, hence[,] she could not have identified him. Accused-appellant added that AAA could not have seen him due to the illumination of the moon when he went out of the small barn because AAA testified that she only saw his back through the window when he was going towards his house.
>
> Accused-appellant's argument is misleading.

[29] *Id.* at 63-64.

[30] *Rollo*, p. 22.

[31] *Id.* at 10.

True, the place where the incident happened was dark[,] which prevented AAA from recognizing accused-appellant as the author of her honor's ravishment. But it was *not only* through the window when AAA saw accused-appellant *but also when he passed through her upon going out the door of the small barn*. This put AAA in a position to clearly see accused-appellant. AAA's testimony on this point is revealing:

Q: And you also said that you were the one who opened the door to let him go out, is that correct?
A: Yes, sir. I was afraid if he will stay longer, he will kill me.

Q: So you were already standing up?
A: Yes, considering I was the one who unlocked the door.

x x x x x x x x x

Prosecutor Olvis: (to the witness)

Mrs. Witness, you stated that you were the one who unlocked the door to let Aurelio Jastiva got (sic) out form (sic) your house. So when he passed the door, you saw him, clearly, isn't it?

A: Yes, ma'am.

Q: You stated that the room was dark. How were you able to see him?
A: **When the door was opened, he was illuminated by a moonlight**.

Q: So, it was Aurelio Jastiva who left your house when you opened the door?
A: Yes, ma'am.

Q: He was the one who raped you?
A: Yes, ma'am.

x x x x x x x x x

Atty. Velasco: (to the witness)

Now when you saw the person who came out from your house, did you see exactly his face?
A: Yes, sir. In fact, when he walked away, I even looked at him over the window.

Q: Why (sic) was he walking towards you or walking away from you?
A: He was walking to the direction of his house.

Q: So in other words, his back was directed towards you while the front of his body was directed to where he was going?
A: **After he passed the door, I saw him. When he already walked away, what I only saw was his back**.

Q: But in your room, the surroundings was still dark?
A: **Yes, sir. Inside the house was dark but when he came out, there was a moonlight, so I saw him clearly**.[32]

And on the various points above-quoted anent the supposed failure of the trial court to prove appellant Jastiva's guilt beyond reasonable doubt, the Court of Appeals had this to say:

Accused-appellant next asserts that the case of *People v. Castro* is on all fours with the instant case. He claims that if indeed AAA saw him as [her] attacker, she should have mentioned distinguishing features or physical appearance on his body to recognize him.

We do not agree.

In *Castro*, x x x [t]herein accused-appellant Castro was practically a *stranger* to private complainant Edith, thus the need x x x for the latter to mention distinguishing features in the face or physical appearance of the former to show that she indeed recognized him as the person who raped her.

Unlike in this case, AAA testified that she knows accused-appellant very well, they being neighbors. In fact, she is a friend of accused-appellant's wife as sometimes, the latter would sleep with her at night. Accused-appellant even admitted that she knows AAA and that the latter could not have mistaken her for someone else. Thus, AAA does not need to mention any distinguishing features of accused-appellant.

Accused-appellant next posits that AAA's testimony below failed to show any force or intimidation exerted upon her. Accused-appellant stated that what further erodes the credibility of AAA is her testimony that accused-appellant appeared to have indulged in "sexual foreplay" first, *i.e.*[,] he sucked AAA's vagina and then went up to kiss her,

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

which does not happen in rape cases. Usually, according to accused-appellant, a rapist is pressed with (sic) time so as not to be caught *in flagrante delicto*; thus, a rapist would not leisurely engage in sexual intercourse with his victim being in consonance with reason and common experience.

We still disagree.

For one, the "sexual foreplay" referred to by accused-appellant was not improbable considering that as testified to by AAA, accused-appellant was not yet erected (sic) at that time. For another, there is a sufficient reason to believe why accused-appellant did this because he may have been aware that BBB, AAA's husband, was not around on that night. Certainly and more likely, accused-appellant would not have acted upon his lewd design had he known that BBB was there in the small barn with AAA. In addition to this was accused-appellant's testimony that aside from the fact that he knows AAA very much, he also knows that sometimes AAA's family would stay in their small barn in *Barangay* XXX and sometimes in their permanent residence in *Barangay* ZZZ.[33] (Citations omitted.)

As to the damages awarded by the RTC to AAA, though the Court of Appeals affirmed the same, however, in the dispositive portion of the decision, it further imposed upon appellant Jastiva the need to pay interest on all the damages due at the legal rate of 6% per annum from the finality of its decision – the Court of Appeals anchored its directive upon this Court's decisions in *People v. Galvez*[34] and *People v. Abella*.[35]

On September 9, 2011, appellant Jastiva filed a Notice of Appeal before the Court of Appeals. In a Resolution dated October 4, 2011, the appellate court resolved to grant the same and ordered its Judicial Records Division to elevate the records of the case to this Court.

Hence, this appeal under Rule 44 of the Rules of Court, as amended, wherein appellant Jastiva essentially prays for his acquittal based on reasonable doubt.

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[33] *Id.* at 14-15.

[34] G.R. No. 181827, February 2, 2011, 641 SCRA 472.

[35] G.R. No. 177295, January 6, 2010, 610 SCRA 19.

Appellant Jastiva reiterates his assignment of errors in the Court of Appeals, *viz*:

I.

THE COURT *A QUO* GRAVELY ERRED BY GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT THAT SHE RECOGNIZED THE ACCUSED-APPELLANT WHEN HE WENT OUT OF THE HOUSE OF THE PRIVATE COMPLAINANT.

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[36]

To restate, according to appellant Jastiva, the evidence presented by the prosecution was not sufficient to establish his guilt beyond reasonable doubt as the perpetrator of the crime charged; and "[t]he manner by which AAA was allegedly raped is incredible,"[37] and is tantamount to reasonable doubt as to his legal culpability thereto, *viz*:

> From her testimony, it would appear that accused-appellant indulge (sic) into (sic) foreplay in raping AAA. This is highly unbelievable. Normally, a rapist, who is pressed for time so as not to be caught *in flagrante*, would not leisurely engage in sexual intercourse with his victim, as what actually happened in this case. [38]

And in his Supplemental Brief[39] filed before this Court, appellant Jastiva continues to insist that his guilt had not been

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[36] CA *rollo*, p. 10.

[37] *Rollo*, p. 34.

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

[39] In a Resolution dated January 18, 2012, this Court resolved to allow the parties to submit their respective Supplemental Briefs if they so desired. Appellant Jastiva filed a Supplemental Brief on May 3, 2012. On the other hand, the appellee, People of the Philippines, filed a Manifestation (in lieu of a Supplemental Brief) stating that it is foregoing filing a Supplemental Brief "considering that all the errors assigned in the Appellant's Brief dated

proven beyond reasonable doubt. He argues further that AAA's claim that he indulged in sexual foreplay prior to having sexual intercourse with her is unbelievable and contrary to the normal conduct of a rapist, to wit:

> The manner by which AAA was allegedly raped is incredible. From her testimony, it would appear that accused-appellant indulge (sic) into (sic) foreplay in raping AAA. This is highly unbelievable. Normally, a rapist, who is pressed for time so as not to be caught *in flagrante*, would not leisurely engage in sexual intercourse with his victim, as what actually happened in this case.
>
> x x x x x x x x x
>
> With utmost due respect to the Court of Appeals, we beg to disagree with its findings that the "sexual foreplay" was not improbable considering that accused-appellant may have been aware that AAA's husband was not around on the night of the alleged rape. With all due respect, there was no evidence showing that the accused-appellant was indeed aware of the fact that AAA's husband was not around at that night so that [the] accused-appellant can do the sexual foreplay without fear of having (sic) caught. Apparently, the Court of Appeals made a conclusion which was not present in evidence x x x it merely made a conclusion that the accused-appellant "may have been aware that AAA's husband was not around during the night of rape" thereby the accused-appellant could have resorted to sexual foreplay. Why would the accused-appellant resort to sexual foreplay knowing that the husband of AAA might arrive anytime of the night?
>
> The postulation therefore that the accused-appellant could resort to sexual foreplay is possible because he is aware that BBB was not around at the night of the alleged rape cannot be taken against the accused-appellant's resulting in his conviction especially so if there is no evidence that indeed accused-appellant was aware of the absence of BBB. The said theory is merely a suspicion not supported by evidence. It is hornbook doctrine that suspicions and speculations can never be the basis of conviction in a criminal case. Courts must ensure that the conviction of the accused rests firmly on sufficient and competent evidence, and not the results of passion and prejudice.

February 15, 2010 [filed before the Court of Appeals] have already been thoroughly refuted and discussed in its Appellee's Brief dated June 29, 2010."

We humbly submit that the foregoing evidence leads to one conclusion, that is, the guilt of the accused-appellant has not been proven beyond reasonable doubt there being doubt as to who the real culprit was.[40] (Citations omitted.)

On March 29, 2012, appellee People manifested that it will no longer file a *Supplemental Brief* as it had already refuted thoroughly in its *Appellee's Brief* all the assignments of error raised by appellant Jastiva filed before the Court of Appeals.

The principal issue in this case, therefore, is whether or not the prosecution was able to prove the guilt of appellant Jastiva beyond reasonable doubt on the basis of the testimonies of the prosecution witnesses and the documentary evidence presented.

The appeal is bereft of merit.

Article 266-A of the Revised Penal Code defines the crime of rape, *viz*:

ART. 266-A. *Rape, When and How Committed.* – Rape is committed –

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation[.]

From the above-quoted provision of law, the elements of rape (under paragraph 1, subparagraph a) are as follows: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force, (threat) or intimidation.[41]

The RTC and the Court of Appeals were one in finding that appellant Jastiva had carnal knowledge of AAA against the latter's will through force and intimidation. Despite his vigorous protestations, this Court agrees in the finding that the crime of rape committed by appellant Jastiva against AAA was proved

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[40] *Rollo,* pp. 34-37.

[41] L. Reyes, *THE REVISED PENAL CODE*, Book Two (15th ed., 2001), p. 519.

by the prosecution beyond reasonable doubt on the basis of the following:

a) AAA's credible, positive and categorical testimony relative to the circumstances surrounding her rape;

b) AAA's positive identification of appellant Jastiva as the one who raped her;

c) The physical evidence consistent with AAA's assertion that she was raped; and

d) The absence of ill motive on the part of AAA in filing the complaint against appellant Jastiva.

Consequently, this appeal is denied, and the conviction of appellant Jastiva is affirmed.

Firstly, the appeal of appellant Jastiva centers on the credibility of AAA, the main prosecution witness. But credibility of a witness is the sole province of the RTC being the trial court in this case. Basic is the rule that the findings of fact of the trial court on matters of credibility of witnesses are generally conclusive on this Court, which is not a trier of facts. Such conclusiveness derives from the trial court's having the first-hand opportunity to observe the demeanor and manner of the victim when he/she testified at the trial.[42] Undeniably, the calibration of the testimony of a witness, and the assessment of the probative weight thereof, are virtually left, almost entirely, to the trial court which has the opportunity to observe the demeanor of the witness at the stand. Unless there are substantial matters that might have been overlooked or discarded, generally, the findings of the trial court as to the credibility of a witness will not be disturbed on appeal.[43] The foregoing is especially true when such findings are affirmed by the appellate court. In this case, with appellant Jastiva not showing that the RTC and the Court of Appeals overlooked any fact or material of consequence that could have altered the outcome had they taken it into

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[42] *People v. Taguilid,* G.R. No. 181544, April 11, 2012, 669 SCRA 341, 350.

[43] *People v. Batiancila,* 542 Phil. 420, 429 (2007).

consideration, this Court will not disturb on appeal the RTC's findings of fact, but must fully accept the same.

At this point, it is worthy to recall the three guiding principles in rape prosecutions: (1) an accusation of rape is easy to make, and difficult to prove, but it is even more difficult to disprove; (2) bearing in mind the intrinsic nature of the crime, the testimony of the complainant must be scrutinized with utmost care and caution; and (3) the evidence of the prosecution must stand or fall on its own merits; and cannot draw strength from the weakness of the defense. So, when a woman says that she has been raped, she says in effect all that is necessary to show that the crime of rape was committed. In a long line of cases, this Court has held that if the testimony of the rape victim is accurate and credible, a conviction for rape may issue upon the sole basis of the victim's testimony. This is because no decent and sensible woman will publicly admit to being raped and, thus, run the risk of public contempt unless she is, in fact, a rape victim.[44]

In this case, appellant Jastiva insistently makes an issue out of AAA's failure to shout for help or struggle against him, which for him does nothing but erode her credibility. This Court, however, does not agree. It does not follow that because AAA failed to shout for help or struggle against her attacker means that she could not have been raped. The force, violence, or intimidation in rape is a relative term, depending not only on the age, size, and strength of the parties but also on their relationship with each other.[45] And physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety.[46] Records disclose that in this case, AAA was already 67 years of age when she was raped in the dark by appellant Jastiva who was armed with a knife. Justifiably, a woman of

[44] *Id.* at 425-426.

[45] *People v. Barcena*, 517 Phil. 731, 742 (2006).

[46] *People v. Moreno*, 425 Phil. 526, 538 (2002).

such advanced age could only recoil in fear and succumb into submission. In any case, with such shocking and horrifying experience, it would not be reasonable to impose upon AAA any standard form of reaction. Time and again, this Court has recognized that different people react differently to a given situation involving a startling occurrence.[47] The workings of the human mind placed under emotional stress are unpredictable, and people react differently - some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.[48]

More to the point, physical resistance is not the sole test to determine whether a woman involuntarily succumbed to the lust of an accused.[49] Some may offer strong resistance while others may be too intimidated to offer any resistance at all,[50] just like what happened in this case. Thus, the law does not impose a burden on the rape victim to prove resistance. What needs only to be proved by the prosecution is the use of force or intimidation by the accused in having sexual intercourse with the victim[51] – which it did in the case at bar.

The preceding paragraphs altogether, the testimony of AAA was shown to be credible, natural, convincing and consistent with human nature; and the fact that AAA is already of advanced age lends more credence to her protestations of rape and inspires the thought that this case was filed for the genuine reason of seeking justice.

Secondly, the circumstances after the commission of the rape testified to by AAA sufficed to establish the ability of the latter to identify appellant Jastiva as the perpetrator of the crime. Appellant Jastiva's assertions that the cover of darkness and

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[47] *People v. Gonzales*, G.R. No. 141599, June 29, 2004, 433 SCRA 102, 115.

[48] *People v. Taguilid*, *supra* note 42 at 351; citing *People v. San Antonio, Jr.*, 559 Phil. 188, 205 (2007).

[49] *People v. Batiancila*, *supra* note 43 at 429.

[50] *People v. David*, 461 Phil. 364, 385 (2003).

[51] *People v. Batiancila*, *supra* note 43 at 430.

lack of lighting inside the "*kamalig*" where the crime took place, utterly diminished AAA's ability to identify him or anyone for that matter, is downright specious. AAA never claimed to have seen her attacker inside the "*kamalig*." What AAA testified to was the fact that she saw appellant Jastiva when he walked past her by the open door of the "*kamalig*" and his face was finally illuminated by the moonlight. As explained by the RTC –

> In not a few cases, though, the High Court held that an accused need not always be identified under a perfect or near perfect visibility. This was demonstrated in *People v. Villaruel* with the Supreme Court saying that –
>
> > Our cases have held that wicklamps, flashlight, even moonlight and starlight may, in proper situations, be sufficient illumination, making the attack on the credibility of witnesses solely on this ground unmeritorious.
>
> The ruling in *People v. Pueblas*, citing the earlier ruling in *People v. Vacal*, is even more to the point, thus:
>
> [I]f identification of persons is possible even by the light of stars, with more reason that one could identify persons by moonlight.[52] (Citations and emphases omitted.)

From the above, the RTC correctly held that "the Court is not disposed to doubt the evidenced ability of the complainant to identify her rapist especially because her familiarity of the latter could easily be strengthened by the fact that the accused is her neighbor living some 100 meters away from the crime scene."[53]

Thirdly, contrary to appellant Jastiva's claim that the "absence of rape is x x x bolstered by the medical findings,"[54] the *Medical Certificate* issued by Dr. Domiciano P. Talaboc, Municipal Health Officer of the town where the crime of rape was committed, stating his medico-legal findings of his examination of AAA made on August 5, 2004 showing:

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[52] Records, p. 110.

[53] *Id.*

[54] CA *rollo*, p. 22.

Findings: 1) Patient is ambulatory, conscious, coherent and oriented as to time, day and place.

2) Multiple scratches noted at both upper and lower lips, towards the inner folds.

x x x x x x x x x

5) On internal examination, both labia majora and labia minora on both sides showed signs of irritation, reddish in color, and partial separation of tissues between labia majora and labia minora on both sides was noted with more separation on the right side.[55]

is consistent with AAA's assertion that appellant Jastiva succeeded in having sexual intercourse with her.

And, *fourthly*, worth noting is the fact that appellant Jastiva did not allege, much less show, that AAA was prompted by improper or malicious motives to impute upon him such a serious charge. This being so, the categorical and positive identification of appellant Jastiva prevails over the latter's plain alibi and bare denial.

Moreover, such prevarication was devoid of any persuasion due to its being easily and conveniently resorted to, and due to denial being generally weaker than and not prevailing over the positive assertions of an eyewitness. It has been held that for the defense of alibi to prosper, the accused must prove the following: (*i*) that he was present at another place at the time of the perpetration of the crime; and (*ii*) that it was physically impossible for him to be at the scene of the crime during its commission. Physical impossibility involves the distance and the facility of access between the crime scene and the location of the accused when the crime was committed; the accused must demonstrate that he was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.[56]

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[55] Records, p. 60.

[56] *People v. Ramos,* G.R. No. 190340, July 24, 2013.

Here, appellant Jastiva utterly failed to satisfy the above-quoted requirements. From the testimonies of the witnesses, it was shown that the distance between AAA's farmhouse and appellant Jastiva's house was only 150 meters, more or less.[57] Certainly, 150 meters is not too far as to preclude the presence of appellant Jastiva at the farmhouse of AAA. That he presented witnesses to attest to his presence at his own home around the time the rape was said to have been committed did not help him one bit. If truth be told, the testimonies of his wife and daughter were more deleterious to his defense because they contradicted each other's account on material points relative to the circumstances of that fateful night. Appellant Jastiva's common-law wife, Vilma, testified that:

Q: Mrs. Witness, how are you related with (sic) Aurelio Jastiva?
A: My husband, sir.

Q: Where were you on August 3, 2004 at around 11:00 x x x in the evening?
A: In our house.

x x x x x x x x x

Q: How about Aurelio Jastiva, where was he on August 3, 2004 at around 11:00 x x x in the evening?
A: He was still in our house because during the time we had a visitor in our house.

Q: Who was your visitor in your house at that time?
A: Gloria Ordas.

Q: Why can you say that Aurelio Jastiva was in your house at that time?
A: I was a witness because I was there also in our house.

Q: Now, Aurelio Jastiva is charged of alleged Rape which allegedly happened on August 3, 2004 at around 11:00 x x x in the evening, what can you say about that?
A: I have no knowledge about that old woman who was raped because she was lying.

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[57] Appellant Jastiva's admission during his cross-examination on February 17, 2009, p. 8.

Q: Why can you say that?

A: **Because I have no knowledge about that incident considering that we are on a far place**.[58] (Emphasis supplied.)

On the other hand, the testimony of appellant Jastiva's daughter, Merlyn, is quite informative:

Q: Merlyn Jastiva, how are you related with the accused Aurelio Jastiva?
A: He is my father, sir.

Q: Where were you in the evening of August 3, 2004?
A: At home, sir.

x x x x x x x x x

Q: Where was Aurelio Jastiva in the evening of August 3, 2004?
A: He was sleeping at home.

Q: Before 11:00 x x x in the evening, where was Aurelio Jastiva?
A: He did not leave the house. He just stayed home.

Q: At about 11:00 x x x in the evening of that day, August 3, 2004 where was Aurelio Jastiva?
A: At home sleeping.

Q: Why can you say that during that time Aurelio Jastiva was in your house?
A: **Because I was sleeping with my parents. I know that my father slept beside my mother**.

Q: Will you be able to notice if your father went out of your house in that evening of August 3, 2004?
A: Yes, because we have only one door in our house.

Q: Did he go out of the house in that evening of August 3, 2004 at about 11:00 x x x in the evening?
A: No sir, he already fall (sic) asleep.[59] (Emphasis supplied.)

But when she was cross-examined, Merlyn revealed that her father did not actually sleep beside her mother; thus, contradicting her earlier declaration that her father slept beside

[58] TSN, December 5, 2007, pp. 3-4.

[59] TSN, October 29, 2008, pp. 3-4.

her mother, and she (Merlyn) slept with them, *viz*:

Q: You said earlier that your brothers used to go out even at night. Now, during that time was any of your brothers was (sic) out during that night?
A: No ma'am. We already fall (sic) asleep.

Q: Where was Rolly [her brother] sleeping at that time?
A: We, women are sleeping near the door and the other siblings in the other corner of the house.

Q: You said the women are sleeping near the door?
A: Yes, ma'am.

Q: And the men sleep safely far from the door?
A: Yes ma'am.

x x x x x x x x x

Q: And your father is just sleeping far from the door? From the women?
A: Yes, ma'am. **Because he slept with my brother siblings**.[60] (Emphasis supplied.)

The aforequoted testimonies highlighted the fact that appellant Jastiva could have slipped in and out of their house undetected by Vilma and Merlyn. Such scenario is all the more likely as appellant Jastiva himself admitted upon questioning by the RTC that he actually slept in another room; hence, his wife and daughter had no way of being sure if he was inside their house or not, to wit:

Q: How about the "*kamalig*". How far is the kamalig to your house?
A: 150 meters more or less.

Q: Who are the occupants of your house [on] August 3, 2004?
A: We, your Honor.

Q: Who are those "we"?
A: My children together with my wife.

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

Q: How many children do you have?
A: Seven (7) children and my wife.

Q: Meaning, all of you were at your house at [Poblacion YYY], [ZZZ], Zamboanga del Norte on August 3, 2004?
A: Yes ma'am.

Q: And the dimension of the house is 8x12 with only one room?
A: Yes ma'am, Only one (1) room.

Q: Meaning, there is no division in your house?
A: There is a division ma'am which divides the house into two.

Q: In that division are there doors or what?
A: Yes, your Honor, going to the sala.

Q: So, the sala and the other room is used for sleeping?
A: Yes, ma'am.

Q: All the nine (9) of you were asleep in that one (1) room?
A: No your Honor. **Only my wife together with our youngest sleep in that room**.

Q: How about the other six (6) children of yours? Where do they sleep?
A: In the sala, your Honor.[61] (Emphasis supplied.)

Appellant Jastiva further tries to interject reasonable doubt by pointing out that AAA's claim that he indulged in sexual foreplay prior to having sexual intercourse with her is unbelievable and contrary to the normal conduct of a rapist, *i.e.*, that "[n]ormally, a rapist, who is pressed for time so as not to be caught *in flagrante*, would not leisurely engage in sexual intercourse with his victim, as what actually happened in this case."[62] He reasons that he could not have engaged in sexual foreplay because he could not have known that AAA would be all alone in the farmhouse on the night in question.

Case law, however, shows numerous instances of rape committed under indirect and audacious circumstances.[63] The

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[61] TSN, February 17, 2009, pp. 10-11.

[62] *Rollo*, pp. 34-35.

[63] *People v. Pangilinan*, 547 Phil. 260, 286 (2007).

lust of a lecherous man respects neither time nor place. Neither the crampness of the room, nor the presence of people therein, nor the high risk of being caught, has been held sufficient and effective obstacle to deter the commission of rape.[64]

Also, appellant Jastiva's objections are without basis, and at best, merely lip service. During his cross-examination, he admitted that he knew AAA; in fact, he acknowledged that she could easily identify him, to wit:

Q: And the residence of [AAA] is also at [Poblacion YYY], [ZZZ], Zamboanga del Norte?
A: It is not their real residence it is only a barn.

Q: That place is just near from your house. Is that right?
A: Yes, ma'am. We are only apart by a rice field which is about more or less 150 meters.

x x x x x x x x x

Q: You know very well [AAA]?
A: Yes, ma'am.

Q: And she could not be mistaken of your identity. Right?
A: Yes ma'am, being a neighbor.[65]

And when the RTC propounded clarificatory questions, appellant Jastiva disclosed that he knew pretty well the routine of the spouses AAA and BBB, *viz*:

Q: You mentioned about "*kamalig*" or barn. Is that where [AAA] and her family live?
A: Yes, ma'am. If they are working in the field.

Q: How about when they do not work in the field, where does [AAA] live?
A: In [WWW]. Their real residence.

Q: And [she] live there in [WWW] together with her family?
A: Yes, ma'am.

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[64] *People v. Rellota*, G.R. No. 168103 (formerly G.R. Nos. 155930-32), August 3, 2010, 626 SCRA 422, 433.

[65] TSN, February 17, 2009, p. 8.

Q: Who are the members of her family if you know?
A: She has only two (2) children.

x x x x x x x x x

Q: How far is the residence of [AAA] from [WWW] to your residence at [YYY], [ZZZ], Z.N.?
A: About a kilometer ma'am.[66]

All told, this Court is convinced beyond reasonable doubt that appellant Jastiva committed the crime of rape by having carnal knowledge of AAA using force and intimidation. Under Article 266-B of the Revised Penal Code, the proper penalty to be imposed is:

> Art. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

But the imposition of death penalty has been prohibited by Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines"; thus, the RTC, as affirmed by the Court of Appeals, properly imposed upon appellant Jastiva the penalty of *reclusion perpetua*.

Relative to the award of damages, the RTC correctly awarded ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. Civil indemnity is in the nature of actual and compensatory damages, and is obligatory upon conviction of rape. As to moral damages, it is automatically awarded to rape victims without the necessity of proof, for it is assumed that they suffered moral injuries entitling them to such award. Similarly, the Court of Appeals fittingly imposed interest on all damages awarded to AAA, the private offended party, at the legal rate of six percent (6%) per annum from the date of the finality of this Court's decision in conformity with present jurisprudence.[67]

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[66] *Id.* at 9.

[67] *People v. Diaz*, G.R. No. 200882, June 13, 2013; citing *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

This Court notes, however, that both the RTC and Court of Appeals overlooked the award of exemplary damages. Being corrective in nature, exemplary damages can be awarded even in the absence of an aggravating circumstance if the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.[68] Thus, this Court deems it necessary to modify the civil liability of appellant Jastiva to include exemplary damages for the vindication of the sense of indignity and humiliation suffered by AAA, a woman of advanced age, and to set a public example, to serve as deterrent to those who abuse the elderly, and to protect the latter from sexual assaults.

WHEREFORE, the Decision dated August 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00754-MIN is **AFFIRMED with MODIFICATION**. Appellant Aurelio Jastiva is found **GUILTY** beyond reasonable doubt of the crime of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Appellant Aurelio Jastiva is further ordered to pay legal interest on all damages awarded in this case at the rate of six percent (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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[68] *People v. Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807, 820.

THIRD DIVISION

[G.R. No. 200915. February 12, 2014]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MERLITA PALOMARES *y* COSTUNA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF DANGEROUS DRUGS; REQUISITES.— To secure conviction for illegal sale of dangerous drugs, the identity of the prohibited drug seized from the accused must be proved with moral certainty. The prosecution must establish with such measure of certitude that the substance bought or seized during the buy-bust operation is the same substance offered as evidence in court.

2. ID.; ID.; ID.; CHAIN OF CUSTODY; REQUISITE THAT THE POLICE MARK THE SEIZED ITEM IN THE PRESENCE OF THE APPREHENDED VIOLATOR AND IMMEDIATELY UPON CONFISCATION; COMPLIANCE UNCERTAIN IN CASE AT BAR.— Proof of the chain of custody from the time of seizure to the time such evidence is presented in court ensures the absence of doubt concerning the integrity of such vital evidence. This requires as a minimum that the police mark the seized item (1) in the presence of the apprehended violator and (2) immediately upon confiscation. Of course, the Court has ruled that immediate marking could be made at the nearest police station or office of the apprehending team. Here, however, the evidence is unclear as to where the responsible police officer marked the seized substance and whether it was done in Merlita's presence. In fact, it is also not clear from the evidence which police officer did the marking since PO2 Mallari and PO2 Flores gave conflicting testimonies on this point. This uncertainty concerning a vital element of the crime warrants overturning the judgment of conviction. Besides, neither PO2 Mallari nor PO2 Flores testified that they conducted a physical inventory and took photos of the article that was seized from Merlita. In fact, their joint affidavit of arrest made no mention of any inventory taking or photographing of the same. And

they did not bother at all to offer some justification for the omission.

3. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; WEAK DEFENSE BUT CANNOT RELIEVE THE REQUISITE OF PROOF BEYOND REASONABLE DOUBT.— Though Merlita's denial and alibi as a defense are weak, such cannot relieve the prosecution the burden of presenting proof beyond reasonable doubt that an illegal transaction actually took place.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This case is about the need for police officers involved in buy-bust operations to mark the items they seize (1) in the presence of the apprehended violator and (2) immediately upon seizure.

The Facts and the Case

On March 21, 2007 the City Public Prosecutor charged the accused-appellant Merlita Palomares *y* Costuna (Merlita) with selling prohibited drugs in violation of Section 5,[1] Article II of Republic Act (R.A.) 9165 before the Regional Trial Court (RTC) of Manila in Criminal Case 07-251767.[2]

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[1] **Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.** - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[2] Records, p. 1.

PO2 Reynaldo Mallari and PO2 Marvin Flores testified that at around 4:00 p.m. on March 16, 2007 an informant came to their station with the report that a certain *Inday Kirat*, later identified as accused Merlita, was selling *shabu* at Paradise Heights, Balut, Tondo, Manila. PO2 Mallari relayed this information to their chief who then formed a team composed of PO2 Mallari, PO2 Flores, and PO2 Dranreb Cipriano that would undertake a buy-bust operation with Mallari as *poseur* buyer.[3] With the marked money ready, the team proceeded to the target place: Unit 52, Building 8, of Paradise Heights.

After the team deployed, PO2 Mallari and the informant found Merlita outside Unit 52 and in conversation with a certain Teresa Ortega (Ortega). Mallari approached Merlita who asked him, "*Iskor ka ba friend?*"[4] Mallari replied, "*Dalawang piso lang friend*."[5] He then handed over the money to Merlita who pocketed it, went inside the unit, and returned with a white plastic sachet containing white crystalline substance. She handed this over to Mallari. Mallari scratched his head as a pre-arranged signal to his companions, introduced himself as a policeman, took back the marked money, and arrested Merlita.

PO2 Flores and PO2 Cipriano came out of hiding and approached Ortega while PO2 Mallari took accused Merlita downstairs to the police service vehicle and waited for the others to come down. Mallari retained custody of the plastic sachet he bought from Merlita as well as the buy-bust money he seized from her. He placed the marking MCP on the sachet and turned it over at the police station to P/Insp. John Guiagui. The latter in turn prepared the report for laboratory examination and forwarded the seized items to the crime laboratory on the same day. The laboratory examination showed that the plastic sachet from Merlita tested positive for methamphetamine hydrochloride or *shabu*.

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[3] TSN, August 29, 2007, p. 4.

[4] *Id.* at 10.

[5] *Id.* at 11.

Accused Merlita testified that at about 5:00 a.m. on March 16, 2007 she was at her shanty located at Pier 18, Dumpsite, Vitas, Tondo, with her live-in partner Rolando Palomares when PO2 Mallari and his companions roused her from sleep. They told her to go with them, she having been pinpointed by a certain Teresa as selling illegal drugs. Merlita denied the accusation but went with the police officers to avoid harm. As she came out of her shanty, she saw her mother-in-law, Teresa Ortega, with other policemen. The police brought the two women to the police station where they were told to pay ₱100,000.00 or face an illegal drugs case.[6] Rolando Palomares corroborated Merlita's testimony. *Barangay kagawad* Louie Lizano testified that he saw the police officers on the day in question enter Merlita's shanty and arrest her.[7]

On March 18, 2008, the trial court found Merlita guilty as charged and sentenced her to life imprisonment with a fine of ₱500,000.00 and liability for the cost of suit.[8] Upon review in CA-G.R. CR-HC 03373, the CA rendered judgment[9] on June 23, 2011, affirming in full the RTC Decision, hence, the present appeal to this Court.[10]

The Issue Presented

The issue in this case is whether or not the CA erred in finding, like the RTC before it, that the prosecution succeeded in proving beyond reasonable doubt that accused Merlita sold dangerous drugs in violation of Section 5, Article II of R.A. 9165.

The Court's Rulings

To secure conviction for illegal sale of dangerous drugs, the identity of the prohibited drug seized from the accused must

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[6] TSN, October 10, 2007, pp. 3-5, 10.

[7] TSN, September 17, 2007, pp. 27-31.

[8] CA *rollo*, pp. 56-60.

[9] *Rollo*, pp. 2-9.

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

be proved with moral certainty. The prosecution must establish with such measure of certitude that the substance bought or seized during the buy-bust operation is the same substance offered as evidence in court.[11] Proof of the chain of custody from the time of seizure to the time such evidence is presented in court ensures the absence of doubt concerning the integrity of such vital evidence.[12] This requires as a minimum that the police mark the seized item (1) in the presence of the apprehended violator and (2) immediately upon confiscation.[13]

Of course, the Court has ruled that immediate marking could be made at the nearest police station or office of the apprehending team.[14] Here, however, the evidence is unclear as to where the responsible police officer marked the seized substance and whether it was done in Merlita's presence. In fact, it is also not clear from the evidence which police officer did the marking since PO2 Mallari and PO2 Flores gave conflicting testimonies on this point.[15] This uncertainty concerning a vital element of the crime warrants overturning the judgment of conviction.[16]

Besides, neither PO2 Mallari nor PO2 Flores testified that they conducted a physical inventory and took photos of the article that was seized from Merlita. In fact, their joint affidavit of arrest made no mention of any inventory taking or photographing of the same. And they did not bother at all to offer some justification for the omission.[17]

Parenthetically, *barangay kagawad* Lizano, an elected public official, testified that he saw the police officers enter Merlita's

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[11] *People v. Torres*, G.R. No. 191730, June 5, 2013.

[12] See *Zafra v. People*, G.R. No. 190749, April 25, 2012, 671 SCRA 396, 405.

[13] *People v. Somoza*, G.R. No. 197250, July 17, 2013.

[14] *People v. Angkob*, G.R. No. 191062, September 19, 2012, 681 SCRA 414, 426.

[15] TSN, August 6, 2007, p. 7; TSN, August 29, 2007, p. 14.

[16] *People v. Clara*, G.R. No. 195528, July 4, 2013.

[17] *People v. Oniza*, G.R. No. 202709, July 3, 2013.

shanty and arrest her on the date in question. This testimony from a neutral party strikes at the heart of the prosecution's theory that they arrested Merlita at Unit 52, Building 8, of Paradise Heights in Balut, Tondo. Though Merlita's denial and alibi as a defense are weak, such cannot relieve the prosecution the burden of presenting proof beyond reasonable doubt that an illegal transaction actually took place.[18]

WHEREFORE, the Court **GRANTS** the appeal, **REVERSES and SETS ASIDE** the judgments of conviction of the Court of Appeals in CA-G.R. CR-HC 03373 dated June 23, 2011 and the Regional Trial Court of Manila in Criminal Case 07-251767, and **ACQUITS** accused-appellant Merlita Palomares *y* Costuna of the charge of violation of Section 5, Article II of Republic Act 9165 against her.

The Court **ORDERS** the Director of the Bureau of Corrections to immediately **RELEASE** accused-appellant from custody, unless she is detained for some other lawful cause.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Mendoza, and *Leonen, JJ.,* concur.

THIRD DIVISION

[G.R. No. 205956. February 12, 2014]

P/SUPT. HANSEL M. MARANTAN, *petitioner, vs.* **ATTY. JOSE MANUEL DIOKNO and MONIQUE CU-UNJIENG LA'O,** *respondents.*

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[18] *Id.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; VIOLATION OF *SUB JUDICE* RULE; DISCUSSED.— The *sub judice* rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of this rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court, which reads: Section 3. Indirect contempt to be punished after charge and hearing. – x x x a person guilty of any of the following acts may be punished for indirect contempt: x x x (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice[.] The proceedings for punishment of indirect contempt are criminal in nature. This form of contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. Intent is a necessary element in criminal contempt, and no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it. For a comment to be considered as contempt of court "it must really appear" that such does impede, interfere with and embarrass the administration of justice. What is, thus, sought to be protected is the all-important duty of the court to administer justice in the decision of a pending case. The specific rationale for the *sub judice* rule is that courts, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.

2. ID.; ID.; CONTEMPT; CLEAR AND PRESENT DANGER RULE.— The power of contempt is inherent in all courts in order to allow them to conduct their business unhampered by publications and comments which tend to impair the impartiality of their decisions or otherwise obstruct the administration of justice. As important as the maintenance of freedom of speech, is the maintenance of the independence of the Judiciary. The "clear and present danger" rule may serve as an aid in determining the proper constitutional boundary between these two rights.

> The "clear and present danger" rule means that the evil consequence of the comment must be "extremely serious and the degree of imminence extremely high" before an utterance can be punished. There must exist a clear and present danger that the utterance will harm the administration of justice. Freedom of speech should not be impaired through the exercise of the power of contempt of court unless there is no doubt that the utterances in question make a serious and imminent threat to the administration of justice. It must constitute an imminent, not merely a likely, threat. x x x "A public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely because it concerns a judicial proceeding still pending in the courts, upon the theory that in such a case, it must necessarily tend to obstruct the orderly and fair administration of justice." x x x Freedom of public comment should, in borderline instances, weigh heavily against a possible tendency to influence pending cases. The power to punish for contempt, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.

APPEARANCES OF COUNSEL

M.M. Lazaro & Associates for petitioner.
Sanidad Viterbo Enriquez & Tan Law Office for respondents.

R E S O L U T I O N

MENDOZA, *J.*:

Before the Court is a petition to cite respondents in contempt of Court.

Petitioner P/Supt. Hansel M. Marantan *(Marantan)* is the respondent in G.R. No. 199462,[1] a petition filed on December

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[1] Jennifer Eloise V. Manzano and Monique Cu-Unjieng La'O *v.* Hon. Conchita Carpio-Morales, in her capacity as Ombudsman; Hon. Orlando Casimiro in his capacity as Overall Deputy Ombudsman; Hon. Danilo A. Buemio, in his capacity as Presiding Judge of the Regional Trial Court of

6, 2011, but already dismissed although the disposition is not yet final. Respondent Monique Cu-Unjieng La'O *(La'O)* is one of the petitioners in the said case, while respondent Atty. Jose Manuel Diokno *(Atty. Diokno)* is her counsel therein.

G.R. No. 199462 relates to Criminal Case Nos. 146413-PSG, 146414-PSG and 146415-PSG, entitled "*People of the Philippines v. P/SINSP Hansel M. Marantan, et al.,*" pending before the Regional Trial Court of Pasig City, Branch 265 *(RTC)*, where Marantan and his co-accused are charged with homicide. The criminal cases involve an incident which transpired on November 7, 2005, where Anton Cu-Unjieng (son of respondent La'O), Francis Xavier Manzano, and Brian Anthony Dulay, were shot and killed by police officers in front of the AIC Gold Tower at Ortigas Center, which incident was captured by a television crew from UNTV 37 *(Ortigas incident)*.

In G.R. No. 199462, La'O, together with the other petitioners, prayed, among others, that the resolution of the Office of the Ombudsman downgrading the charges from murder to homicide be annulled and set aside; that the corresponding informations for homicide be withdrawn; and that charges for murder be filed.

In the meantime, on January 6, 2013, a shooting incident occurred in Barangay Lumutan, Municipality of Atimonan, Province of Quezon, where Marantan was the ground commander in a police-military team, which resulted in the death of thirteen (13) men *(Atimonan incident)*. This encounter, according to Marantan, elicited much negative publicity for him.

Marantan alleges that, riding on the unpopularity of the Atimonan incident, La'O and her counsel, Atty. Diokno, and one Ernesto Manzano, organized and conducted a televised/ radio broadcasted press conference. During the press conference, they maliciously made intemperate and unreasonable comments

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Pasig City, Branch 265; P/CSupt. Augusto P. Angcanan, Jr.; P/SInsp. Hansel M. Marantan; P/Sinsp. Samson B. Belmote; PO3 Rizalito SM Ramos, Jr.; PO3 Lloyd F. Soria; P/Insp. Henry R. Cerdon; PO2 Jesus M. Fermin; PO2 Dexter M. Bernadas; PO2 Sonny R. Robrigado; PO2 Fernando Ray S. Gapuz; and PO1 Josil Rey Lucena.

on the conduct of the Court in handling G.R. No. 199462, as well as contumacious comments on the merits of the criminal cases before the RTC, branding Marantan and his co-accused guilty of murder in the Ortigas incident.

On January 29, 2013, this interview was featured in "TV Patrol," an ABS-CBN news program. Marantan quotes[2] a portion of the interview, as follows:

Atty. Diokno

So ang lumabas din sa video that the actual raw footage of the UNTV is very long. Ang nangyari, you see the police officers may nilalagay sila sa loob ng sasakyan ng victims na parang pinapalabas nila that there was a shootout pero ang nangyari na yon e tapos na, patay na.

Ernesto Manzano

Kung sinasabi nilang carnapper dapat huliin nilang buhay yong mga mahal naming sa buhay and kinasuhan pero ang ginawa nila, sila mismo na ang nagbigay ng hatol.

Monique Cu-Unjieng La'o

Sinasabi nila na may kinarnap siya, tinutukan ng baril, hindi magagawa yong kasi kilala ko siya, anak ko yon e x x x he is already so arrogant because they protected him all these years. They let him get away with it. So even now, so confident of what he did, I mean confident of murdering so many innocent individuals.

Atty. Diokno

Despite the overwhelming evidence, however, Supt. Marantan and company have never been disciplined, suspended or jailed for their participation in the Ortigas rubout, instead they were commended by their superiors and some like Marantan were even promoted to our consternation and disgust. Ang problema po e hangang ngayon, we filed a Petition in the Supreme Court December 6, 2011, humihingi po kami noon ng Temporary Restraining Order, etc. – hangang ngayon wala pa pong action ang Supreme Court yong charge kung tama ba yong pag charge ng homicide lamang e subalit kitang kita naman na they were killed indiscriminately and maliciously.

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[2] *Rollo*, pp. 8-9.

Atty. Diokno

Eight years have passed since our love ones were murdered, but the policemen who killed them led by Supt. Hansel Marantan the same man who is involved in the Atimonan killings – still roam free and remain unpunished. Mr. President, while we are just humble citizens, we firmly believe that police rub-out will not stop until you personally intervene.

Ernesto Manzano

Up to this date, we are still praying for justice.

Monique Cu-Unjieng La'o

Ilalaban namin ito no matter what it takes, we have the evidence with us, I mean everything shows that they were murdered.

(Emphasis supplied by petitioner)

Marantan submits that the respondents violated the *sub judice* rule, making them liable for indirect contempt under Section 3(d) of Rule 71 of the Rules of Court, for their contemptuous statements and improper conduct tending directly or indirectly to impede, obstruct or degrade the administration of justice. He argues that their pronouncements and malicious comments delved not only on the supposed inaction of the Court in resolving the petitions filed, but also on the merits of the criminal cases before the RTC and prematurely concluded that he and his co-accused are guilty of murder. It is Marantan's position that the press conference was organized by the respondents for the sole purpose of influencing the decision of the Court in the petition filed before it and the outcome of the criminal cases before the RTC by drawing an ostensible parallelism between the Ortigas incident and the Atimonan incident.

The respondents, in their Comment,[3] argue that there was no violation of the *sub judice* rule as their statements were legitimate expressions of their desires, hopes and opinions which were taken out of context and did not actually impede, obstruct or degrade the administration of justice in a concrete way; that

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[3] *Id.* at 297-306.

no criminal intent was shown as the utterances were not on their face actionable being a fair comment of a matter of public interest and concern; and that this petition is intended to stifle legitimate speech.

The petition must fail.

The *sub judice* rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of this rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court,[4] which reads:

> Section 3. Indirect contempt to be punished after charge and hearing. – x x x a person guilty of any of the following acts may be punished for indirect contempt:
>
> x x x
>
> (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice[.]

The proceedings for punishment of indirect contempt are criminal in nature.[5] This form of contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. Intent is a necessary element in criminal contempt, and no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it.[6]

For a comment to be considered as contempt of court "it must really appear" that such does impede, interfere with and embarrass the administration of justice.[7] What is, thus, sought

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[4] *Romero v. Estrada*, G.R. No. 174105, April 2, 2009, 583 SCRA 396, 403.

[5] *Soriano v. CA*, G.R. No. 128938, June 4, 2004, 431 SCRA 1, 7.

[6] *People v. Godoy*, 312 Phil. 977, 999 (1995).

[7] *People v. Castelo*, 114 Phil. 892, 900 (1962); citing *People v. Alarcon*, 69 Phil. 265 (1939).

to be protected is the all-important duty of the court to administer justice in the decision of a pending case.[8] The specific rationale for the *sub judice* rule is that courts, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.[9]

The power of contempt is inherent in all courts in order to allow them to conduct their business unhampered by publications and comments which tend to impair the impartiality of their decisions or otherwise obstruct the administration of justice. As important as the maintenance of freedom of speech, is the maintenance of the independence of the Judiciary. The "clear and present danger" rule may serve as an aid in determining the proper constitutional boundary between these two rights.[10]

The "clear and present danger" rule means that the evil consequence of the comment must be "extremely serious and the degree of imminence extremely high" before an utterance can be punished. There must exist a clear and present danger that the utterance will harm the administration of justice. Freedom of speech should not be impaired through the exercise of the power of contempt of court unless there is no doubt that the utterances in question make a serious and imminent threat to the administration of justice. It must constitute an imminent, not merely a likely, threat.[11]

The contemptuous statements made by the respondents allegedly relate to the merits of the case, particularly the guilt of petitioner, and the conduct of the Court as to its failure to decide G.R. No. 199462.

As to the merits, the comments seem to be what the respondents claim to be an expression of their opinion that their

[8] *People v. Alarcon*, 69 Phil. 265, 271 (1939).

[9] *Romero v. Estrada*, G.R. No. 174105, April 2, 2009, 583 SCRA 396, 403; citing *Nestle Philippines v. Sanchez*, 238 Phil. 543 (1987).

[10] *Cabansag v. Fernandez*, 102 Phil. 152, 161 (1957).

[11] *Id.* at 161-162.

loved ones were murdered by Marantan. This is merely a reiteration of their position in G.R. No. 199462, which precisely calls the Court to upgrade the charges from homicide to murder. The Court detects no malice on the face of the said statements. The mere restatement of their argument in their petition cannot actually, or does not even tend to, influence the Court.

As to the conduct of the Court, a review of the respondents' comments reveals that they were simply stating that it had not yet resolved their petition. There was no complaint, express or implied, that an inordinate amount of time had passed since the petition was filed without any action from the Court. There appears no attack or insult on the dignity of the Court either.

"A public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely because it concerns a judicial proceeding still pending in the courts, upon the theory that in such a case, it must necessarily tend to obstruct the orderly and fair administration of justice."[12] By no stretch of the imagination could the respondents' comments pose a serious and imminent threat to the administration of justice. No criminal intent to impede, obstruct, or degrade the administration of justice can be inferred from the comments of the respondents.

Freedom of public comment should, in borderline instances, weigh heavily against a possible tendency to influence pending cases.[13] The power to punish for contempt, being drastic and extraordinary in its nature, should not be resorted to unless necessary in the interest of justice.[14] In the present case, such necessity is wanting.

WHEREFORE, the petition is **DISMISSED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Leonen, JJ.,* concur.

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[12] *Id.* at 162.

[13] *Id.*

[14] *Austria v. Masaquel*, 127 Phil. 677, 691 (1967).

FIRST DIVISION

[G.R. No. 159691. February 17, 2014]

HEIRS OF MARCELO SOTTO, REPRESENTED BY: LOLIBETH SOTTO NOBLE, DANILO C. SOTTO, CRISTINA C. SOTTO, EMMANUEL C. SOTTO and FILEMON C. SOTTO; and SALVACION BARCELONA, AS HEIR OF DECEASED MIGUEL BARCELONA, *petitioners, vs.* **MATILDE S. PALICTE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; DEFINITION AND CONCEPT.— There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs.

2. ID.; ID.; ID.; ELEMENTS.— The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as 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) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.

3. ID.; ID.; ID.; ID.; IDENTITY OF CAUSE OF ACTION; ALLEGED INSUFFICIENCY OF COMPLAINT MUST APPEAR ON THE FACE OF THE COMPLAINT AND NOWHERE ELSE; FILING OF MOTION TO DISMISS ASSAILING THE SUFFICIENCY OF THE COMPLAINT DOES NOT HYPOTHETICALLY ADMIT ALLEGATIONS THEREIN; CASE AT BAR.— [T]he test of the sufficiency of the statement of the cause of action is whether or not, *accepting the veracity of the facts alleged*, the court could render a valid judgment upon the same in accordance with the prayer of the complaint. Even so, the filing of the motion to dismiss assailing the sufficiency of the complaint does not hypothetically admit allegations of which the court will take judicial notice of to be not true, nor does the rule of hypothetical admission apply to legally impossible facts, or to facts inadmissible in evidence, or to facts that appear to be unfounded by record or document included in the pleadings. For the ground to be effective, the insufficiency of the complaint must appear on the face of the complaint, and nowhere else. It will be unfair to the plaintiff, indeed, to determine the sufficiency of his cause of action from facts outside of those pleaded in the complaint. According to Moran: "A complaint should not be dismissed for insufficiency unless it appears to a certainty, from the face of the complaint, that plaintiff would be entitled to no relief under any state of facts which could be proved within the facts alleged therein."

4. LEGAL ETHICS; ATTORNEYS; DUTY TO HANDLE ANY LEGAL MATTER WITH ADEQUATE PREPARATION; EMPHASIZED.— It is axiomatic that a lawyer shall not handle any legal matter without adequate preparation. He is expected to make a thorough study and an independent assessment of the case he is about to commence. As such, his claim of good faith was utterly baseless and unfounded. Moreover, laying the blame on the associate lawyer is not plausible. Any client who employs a law firm undeniably engages the entire law firm, not a particular member of it. Consequently, it was not only the associate lawyer but the entire law firm, Atty. Mahinay included, who had presumably prepared the complaint. For Atty. Mahinay to insist the contrary is the height of professional irresponsibility.

5. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; CONSEQUENCES OF WILLFUL AND DELIBERATE FORUM SHOPPING.— The acts of a party or his counsel clearly

constituting willful and deliberate forum shopping shall be ground for the summary dismissal of the case with prejudice, and shall constitute direct contempt, as well as be a cause for administrative sanctions against the lawyer. Forum shopping can be committed in either of three ways, namely: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); or (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*). If the forum shopping is not willful and deliberate, the subsequent cases shall be dismissed without prejudice on one of the two grounds mentioned above. But if the forum shopping is willful and deliberate, *both* (or *all*, if there are more than two) actions shall be dismissed with prejudice. In view of the foregoing, Atty. Mahinay was guilty of forum shopping. Under Revised Circular No. 28-91, any willful and deliberate forum shopping by any party and his counsel through the filing of multiple petitions or complaints to ensure favorable action shall constitute direct contempt of court. Direct contempt of court is meted the summary penalty of fine not exceeding ₱2,000.00.

APPEARANCES OF COUNSEL

M.B. Mahinay and Associates for petitioners.
Remegio P. Torres for respondent.

R E S O L U T I O N

BERSAMIN, *J.*:

We now determine whether or not the petitioners' counsel, Atty. Makilito B. Mahinay, committed forum shopping.

There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising

substantially the same issues either pending in or already resolved adversely by some other court."[1] Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets.[2] An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs.[3]

The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as 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) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.

In our June 13, 2013 decision in this case,[4] we directed Atty. Mahinay to show cause "why he should not be sanctioned as a member of the Integrated Bar of the Philippines for committing a clear violation of the rule prohibiting forum-shopping by aiding his clients in asserting the same claims at least twice." The directive was called for by the following observations made in the decision, to wit:

> We start this decision by expressing our alarm that this case is the fifth suit to reach the Court dividing the several heirs of the late Don Filemon Y. Sotto (Filemon) respecting four real properties that had belonged to Filemon's estate (Estate of Sotto).

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[1] *Chua v. Metropolitan Bank & Trust Company*, G.R. No. 182311, August 19, 2009, 596 SCRA 524, 535.

[2] *Executive Secretary v. Gordon*, G.R. No. 134171, November 18, 1998, 298 SCRA 736, 741.

[3] *Foronda v. Guerrero*, A.C. No. 5469, August 10, 2004, 436 SCRA 9, 23.

[4] 698 SCRA 294.

The first case (*Matilde S. Palicte v. Hon. Jose O. Ramolete, et al.*, No. L-55076, September 21, 1987, 154 SCRA 132) held that herein respondent Matilde S. Palicte (Matilde), one of four declared heirs of Filemon, had validly redeemed the four properties pursuant to the assailed deed of redemption, and was entitled to have the title over the four properties transferred to her name, subject to the right of the three other declared heirs to join her in the redemption of the four properties within a period of six months.

The second was the civil case filed by Pascuala against Matilde (Civil Case No. CEB-19338) to annul the former's waiver of rights, and to restore her as a co-redemptioner of Matilde with respect to the four properties (G.R. No. 131722, February 4, 1998).

The third was an incident in Civil Case No. R-10027 (that is, the suit brought by the heirs of Carmen Rallos against the Estate of Sotto) wherein the heirs of Miguel belatedly filed in November 1998 a motion for reconsideration praying that the order issued on October 5, 1989 be set aside, and that they be still included as Matilde's co-redemptioners. After the trial court denied their motion for reconsideration for its lack of merit, the heirs of Miguel elevated the denial to the CA on *certiorari* and prohibition, but the CA dismissed their petition and upheld the order issued on October 5, 1989. Thence, the heirs of Miguel came to the Court on *certiorari* (G.R. No. 154585), but the Court dismissed their petition for being filed out of time and for lack of merit on September 23, 2002.

The fourth was *The Estate of Don Filemon Y. Sotto, represented by its duly designated Administrator, Sixto Sotto Pahang, Jr. v. Matilde S. Palicte, et al.* (G.R. No. 158642, September 22, 2008, 566 SCRA 142), whereby the Court expressly affirmed the ruling rendered by the probate court in Cebu City in Special Proceedings No. 2706-R entitled *Intestate Estate of the Deceased Don Filemon Sotto* denying the administrator's motion to require Matilde to turn over the four real properties to the Estate of Sotto.

The fifth is this case. It seems that the disposition by the Court of the previous cases did not yet satisfy herein petitioners despite their being the successors-in-interest of two of the declared heirs of Filemon who had been parties in the previous cases either directly or in privity. They now pray that the Court undo the decision promulgated on November 29, 2002, whereby the Court of Appeals (CA) declared their action for the partition of the four properties as already barred by the judgments previously rendered, and the

resolution promulgated on August 5, 2003 denying their motion for reconsideration.

The principal concern here is whether this action for partition should still prosper notwithstanding the earlier rulings favoring Matilde's exclusive right over the four properties.

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What we have seen here is a clear demonstration of unmitigated forum shopping on the part of petitioners and their counsel. It should not be enough for us to just express our alarm at petitioners' disregard of the doctrine of *res judicata*. We do not justly conclude this decision unless we perform one last unpleasant task, which is to demand from petitioners' counsel, Atty. Makilito B. Mahinay, an explanation of his role in this pernicious attempt to relitigate the already settled issue regarding Matilde's exclusive right in the four properties. **He was not unaware of the other cases in which the issue had been definitely settled considering that his clients were the heirs themselves of Marcelo and Miguel. Moreover, he had represented the Estate of Sotto in G.R. No. 158642 (*The Estate of Don Filemon Y. Sotto v. Palicte*).** (Bold underscoring added for emphasis only)

On July 22, 2013, Atty. Mahinay submitted a so-called *Compliance (With Humble Motion for Reconsideration)* containing his explanations, praying that he not be sanctioned for violating the rule against forum shopping, as follows:

1. The first three cases did not resolve the issues raised in Civil Case No. CEB-24393;
2. Marcelo Sotto's cause of action arose only when respondent Palicte violated her "hypothetically admitted" agreement with Marcelo Sotto;
3. He (Atty. Mahinay) was not the one who had prepared and signed the complaint in Civil Case No. CEB-24393, although he assumed the responsibility as to its filing;
4. He (Atty. Mahinay) had filed a motion for referral or consolidation of Civil Case No. CEB-24293 with the intestate proceedings of the Estate of Filemon Y. Sotto, and
5. He (Atty. Mahinay) had acted in good faith in assisting the administrator of the Estate of Filemon Y. Sotto in

filing the *Motion to Require Matilde Palicte To Turn Over And/or Account Properties Owned by the Estate in Her Possession*.[5]

The Court considers Atty. Mahinay's explanations unsatisfactory.

First of all, Atty. Mahinay claims that he could not be deemed guilty of forum shopping because the previous cases did not involve the issues raised in Civil Case No. CEB-24293; hence, *res judicata* would not apply. He maintains that Civil Case No. CEB-24293 was based on the agreement between Palicte and Marcelo Sotto (as the then Administrator of the Estate) to the effect that Palicte would redeem the properties under her name using the funds of the Estate, and she would thereafter share the same properties equally with the Estate.

To establish the agreement between Palicte and Marcelo Sotto, Atty. Mahinay cites Palicte's filing of a motion to dismiss in Civil Case No. CEB-24293 on the ground, among others, of the complaint failing to state a cause of action whereby Palicte *hypothetically admitted* the complaint's averment of the agreement. He submits that a constructive trust between Palicte and the Estate was thereby created; and argues that the issues in Civil Case No. CEB-24293 could not have been raised in the earlier cases because the plaintiffs' cause of action in Civil Case No. CEB-24293 arose only after Palicte violated her agreement with Marcelo Sotto.

Atty. Mahinay's reliance on Palicte's hypothetical admission of her agreement with Marcelo Sotto to buttress his explanation here is unjustified. Such hypothetical admission is only for the purpose of resolving the merits of the ground of insufficiency of the complaint. This is because the test of the sufficiency of the statement of the cause of action is whether or not, *accepting the veracity of the facts alleged*, the court could render a valid judgment upon the same in accordance with the prayer

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[5] *Rollo*, pp. 235-248.

of the complaint.[6] Even so, the filing of the motion to dismiss assailing the sufficiency of the complaint does not hypothetically admit allegations of which the court will take judicial notice of to be not true, nor does the rule of hypothetical admission apply to legally impossible facts, or to facts inadmissible in evidence, or to facts that appear to be unfounded by record or document included in the pleadings.[7]

For the ground to be effective, the insufficiency of the complaint must appear on the face of the complaint, and nowhere else. It will be unfair to the plaintiff, indeed, to determine the sufficiency of his cause of action from facts outside of those pleaded in the complaint. According to Moran: "A complaint should not be dismissed for insufficiency unless it appears to a certainty, from the face of the complaint, that plaintiff would be entitled to no relief under any state of facts which could be proved within the facts alleged therein."[8] Thus, in *Heirs of Juliana Clavano v. Judge Genato*,[9] the Court disapproved the act the trial judge of setting a preliminary hearing on the motion to dismiss based on the insufficiency of the complaint, *viz*:

> x x x We believe that the respondent Judge committed an error in conducting a preliminary hearing on the private respondent's affirmative defenses. It is a well-settled rule that in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted to the court for determination is the sufficiency of the allegations in the complaint itself. Whether those allegations are true or not is beside the point, for their truth is hypothetically admitted by the motion. The issue rather is: admitting them to be true, may the court render a valid judgment in accordance with the prayer of the complaint? Stated otherwise, the sufficiency of the cause of action must appear on the face of the complaint in order to sustain a dismissal on this ground. No extraneous matter may be considered nor facts not alleged, which would require evidence and therefore

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[6] 1 Moran, *Comments on the Rules of Court*, 1995 Edition, p. 605.

[7] *Tan vs. Director of Forestry*, No. L-24548, October 27, 1983, 125 SCRA 302, 315.

[8] Moran, note 6.

[9] G.R. No. L-45837, October 28, 1977, 80 SCRA 217.

must be raised as defenses and await the trial. In other words, to determine the sufficiency of the cause of action, only the facts alleged in the complaint, and no others should be considered.[10]

Should the trial court find that the statement of the cause of action in the complaint cannot support a valid judgment in accordance with the prayer of the complaint, the motion to dismiss is granted and the complaint is dismissed. But if the motion to dismiss is denied, the defending party who has moved to dismiss is then called upon to file an answer or other proper responsive pleading allowed by the rules of procedure, and through such responsive pleading join issues by either admitting or denying the factual averments of the complaint or initiatory pleading. The case then proceeds upon the issues thus raised and joined by the exchange of pleadings.

To stress, the admission of the veracity of the facts alleged in the complaint, being only hypothetical, does not extend beyond the resolution of the motion to dismiss, because a defending party may effectively traverse the factual averments of the complaint or other initiatory pleading only through the authorized responsive pleadings like the answer. Clearly, Atty. Mahinay cannot bind Palicte to her hypothetical admission of the agreement between her and Marcelo Sotto as the Administrator of the Estate.

Given the foregoing, the complaint was properly dismissed because of *res judicata*. There is no question that the ultimate objective of each of the actions was the return of the properties to the Estate in order that such properties would be partitioned among the heirs. In the other cases, the petitioners failed to attain the objective because Palicte's right in the properties had been declared exclusive. There was between Civil Case No. CEB-24293 and the other cases a clear identity of the parties, of subject matter, of evidence, and of the factual and legal issues raised. The Court saw through the petitioners' "ploy to countermand the previous decisions' sustaining Palicte's rights over the properties."

[10] *Id.* at 222.

Secondly, Atty. Mahinay asserts good faith in the filing Civil Case No. CEB-24293. He points out that an associate lawyer in his law office prepared and filed the complaint without his law firm being yet familiar with the incidents in the intestate proceedings involving the Estate, or with those of the previous three cases mentioned in the decision of June 13, 2013.[11] He posits that such lack of knowledge of the previous cases shows his good faith, and rules out deliberate forum shopping on his part and on the part of his law firm.

Rather than prove good faith, the filing of the complaint, "simply guided by the facts as narrated and the documentary evidence submitted by petitioners,"[12] smacked of professional irresponsibility. It is axiomatic that a lawyer shall not handle any legal matter without adequate preparation.[13] He is expected to make a thorough study and an independent assessment of the case he is about to commence. As such, his claim of good faith was utterly baseless and unfounded.

Moreover, laying the blame on the associate lawyer is not plausible. Any client who employs a law firm undeniably engages the entire law firm,[14] not a particular member of it. Consequently, it was not only the associate lawyer but the entire law firm, Atty. Mahinay included, who had presumably prepared the complaint. For Atty. Mahinay to insist the contrary is the height of professional irresponsibility.

Even assuming that Atty. Mahinay did not himself prepare the complaint, it remains that he subsequently personally handled the case. In so doing, he had sufficient time to still become fully acquainted with the previous cases and their incidents, and thereby learn in the due course of his professional service to the petitioners that the complaint in Civil Case No. CEB-

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[11] *Rollo,* pp. 245.

[12] *Id.*

[13] Canon 18, Rule 18.02.

[14] *Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunication Philippines, Inc.*, G.R. No. 104600, July 2, 1999, 309 SCRA 566, 574.

24293 was nothing but a replication of the other cases. Under the circumstances, the *Rules of Court* and the canons of professional ethics bound him to have his clients desist from pursuing the case. Instead, he opted to re-litigate the same issues all the way up to this Court.

Thirdly, Atty. Mahinay states that his filing of the *Motion To Refer Or Consolidate The Instant Case With The Proceedings In The Intestate Estate Of Filemon Sotto Before RTC Branch XVI In SP Proc. No. 2706-R*[15] disproved deliberate forum shopping on his part.

The Court disagrees. Atty. Mahinay's filing of the *Motion To Refer Or Consolidate The Instant Case With The Proceedings In The Intestate Estate Of Filemon Sotto Before RTC Branch XVI In SP Proc. No. 2706-R* indicated that he relentlessly pursued the goal of taking away the properties from Palicte in disregard of the rulings in the earlier cases. We note that the dismissal of the complaint in Civil Case No. CEB-24293 on November 15, 1999[16] prompted Atty. Mahinay to file a motion for reconsideration on December 3, 1999.[17] But he did not await the resolution of the motion for reconsideration, and instead filed the *Motion To Refer Or Consolidate The Instant Case With The Proceedings In The Intestate Estate Of Filemon Sotto Before RTC Branch XVI In SP Proc. No. 2706-R* on May 9, 2000 obviously to pre-empt the trial court's denial of the motion.[18] His actuations did not manifest good faith on his part. Instead, they indicated an obsession to transfer the case to another court to enable his clients to have another chance to obtain a favorable resolution, and still constituted deliberate forum shopping.

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[15] *Rollo*, p. 249.

[16] *Id.* at 97.

[17] *Id.* at 114.

[18] *Id*. at 251; the Order denying the motion for reconsideration was issued on June 6, 2000 (Id. at 124).

And, lastly, Atty. Mahinay argues that his assisting the Administrator of the Estate in filing the *Motion to Require Matilde Palicte To Turn Over And/or Account Properties Owned by the Estate in Her Possession*, wherein he disclosed the commencement of Civil Case No. CEB-24293, and extensively quoted the allegations of the complaint, disproved any forum shopping. He insists that his disclosure of the pendency of Civil Case No. CEB-24293 proved that forum shopping was not in his mind at all.

The insistence cannot command belief. The disclosure alone of the pendency of a similar case does not negate actual forum shopping. Had Atty. Mahinay been sincere, the least he could have done was to cause the dismissal of the action that replicated those already ruled against his clients. The records show otherwise. The filing of the *Motion to Require Matilde Palicte To Turn Over And/or Account Properties Owned by the Estate in Her Possession* on June 7, 2000, a day after the trial court denied his motion for reconsideration in Civil Case No. CEB-24293, was undeniably another attempt of the petitioners and Atty. Mahinay to obtain a different resolution of the same claim. Needless to observe, the motion reiterated the allegations in Civil Case No. CEB-24293, and was the subject of the petition in *The Estate of Don Filemon Y. Sotto vs. Palicte*.[19]

The acts of a party or his counsel clearly constituting willful and deliberate forum shopping shall be ground for the summary dismissal of the case with prejudice, and shall constitute direct contempt, as well as be a cause for administrative sanctions against the lawyer.[20] Forum shopping can be committed in either of three ways, namely: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res*

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[19] G.R. No. 158642, September 22, 2008, 566 SCRA 142.

[20] Section 5, Rule 7, *Rules of Court.*

judicata); or (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*). If the forum shopping is not willful and deliberate, the subsequent cases shall be dismissed without prejudice on one of the two grounds mentioned above. But if the forum shopping is willful and deliberate, *both* (or *all*, if there are more than two) actions shall be dismissed with prejudice.[21]

In view of the foregoing, Atty. Mahinay was guilty of forum shopping. Under Revised Circular No. 28-91,[22] any willful and deliberate forum shopping by any party and his counsel through the filing of multiple petitions or complaints to ensure favorable action shall constitute direct contempt of court. Direct contempt of court is meted the summary penalty of fine not exceeding ₱2,000.00.[23]

WHEREFORE, the Court **FINDS** and **PRONOUNCES ATTY. MAKILITO B. MAHINAY** guilty of forum shopping; and **ORDERS** him to pay to this Court, through the Office of the Clerk of Court, a **FINE** of ₱2,000.00 within fifteen (15) days from notice hereof.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Mendoza,* JJ.,* concur.

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[21] Ao-as v. Court of Appeals, G.R. No. 128464, June 20, 2006, 491 SCRA 339, 354-355.

[22] *Additional Requisites For Petitions Filed With The Supreme Court And The Court Of Appeals To Prevent Forum Shopping Or Appeals To Prevent Forum Shopping Or Multiple Filing Of Petitions And Complaints* (February 8, 1994).

[23] Section 1, Rule 71.

* Vice Associate Justice Bienvenido L. Reyes, who penned the decision under review, pursuant to the raffle of May 8, 2013.

SECOND DIVISION

[G.R. No. 190524. February 17, 2014]

MICHAELINA RAMOS BALASBAS, *petitioner, vs.* **PATRICIA B. MONAYAO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY.— Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness. x x x "[D]ishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty" by the public officer, for it "inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service."

2. ID.; ID.; ID.; MISCONDUCT.— [M]isconduct is a transgression of some established or definite rule of action, is a forbidden act, is a dereliction of duty, is willful in character, and implies wrongful intent and not mere error in judgment. More particularly, it is an unlawful behavior by the public officer. x x x

3. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; ALLEGATIONS MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE.— While technicalities may be dispensed with in administrative proceedings, "this does not mean that the rules on proving allegations are entirely dispensed with. Bare allegations are not enough; these must be supported by substantial evidence at the very least."

4. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; PROTECTION AGAINST UNSUBSTANTIATED CHARGES.— While the law and justice abhor all forms of abuse committed by public officers and employees whose sworn duty is to discharge their duties with utmost responsibility, integrity, competence, accountability, and loyalty, the Court must protect them against unsubstantiated

charges that tend to adversely affect, rather than encourage, the effective performance of their duties and functions.

APPEARANCES OF COUNSEL

Gancayco Balasbas and Associates Law Offices for petitioner.

Mary Jenny Lou J. Odan for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

While the law and justice abhor all forms of abuse committed by public officers and employees whose sworn duty is to discharge their duties with utmost responsibility, integrity, competence, accountability, and loyalty, the Court must protect them against unsubstantiated charges that tend to adversely affect, rather than encourage, the effective performance of their duties and functions.

Assailed in this Petition for Review on *Certiorari*[1] are the November 28, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 102407 and its November 27, 2009 Resolution[3] denying reconsideration thereof.

Factual Antecedents

In a May 19, 2003 letter-complaint[4] filed with the Department of Social Welfare and Development (DSWD), petitioner Atty. Michaelina Ramos Balasbas accused respondent Patricia B. Monayao – then employed by the DSWD – of misrepresentation, fraud, dishonesty and refusal to implement an October 6, 1998

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1 *Rollo*, pp. 10-22.

2 CA *rollo*, pp. 71-81; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr.

3 *Id.* at 101-102.

4 *Rollo*, pp. 38-39.

Order[5] issued by the Department of Environment and Natural Resources (DENR) in a land dispute – docketed with the DENR as H.A. NRD, 11-15-004 (E-11-16-004) – filed sometime in 1987 by petitioner's brother against respondent's father. It appears that in said case, respondent appeared in lieu of her father, who she claimed passed away. Petitioner claimed further that despite judgment rendered in the said dispute awarding one-half of the disputed land to her brother, and respondent's subsequent notarized waiver of her rights to her half, the latter illegally sold the portion, over which she had waived her rights, to her children via a 1992 deed of sale purportedly executed by her father, which was simulated considering that as early as 1987, respondent's father was already deceased.

In a June 24, 2003 letter-reply,[6] the DSWD informed petitioner that respondent was no longer an employee thereof, but was devolved in 1992 to the local government of the municipality of Alfonso Lista in Ifugao Province. Petitioner was thus advised to address her complaint to the Office of the Mayor of Alfonso Lista.

Petitioner thus filed with the Mayor of Alfonso Lista a July 30, 2003 sworn letter-complaint[7] against respondent. In a September 18, 2003 reply[8] to petitioner, however, Alfonso Lista Mayor Glenn D. Prudenciano refused to take action on the complaint, citing an August 19, 2003 opinion[9] of Victor P. Sibal, Director II of the Cordillera Administrative Region office of the Civil Service Commission (CSC-CAR), which stated that petitioner's complaint against respondent may not be acted upon as the acts complained of were not in relation to the latter's duties and responsibilities as Municipal Population Officer.

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5 *Id.*, unpaginated.

6 *Id.* at 40.

7 *Id.* at 41-42.

8 *Id.*, unpaginated.

9 *Id.*, unpaginated.

Petitioner wrote an October 16, 2003 letter[10] to the CSC, appealing the August 19, 2003 opinion of the CSC-CAR. She claimed that the actions of respondent violated the civil service laws and amounted to grave misconduct and immorality, thus:

> The question is this – is it only acts related to the duties and responsibilities of a government officer that can be the subject of an administrative case? Stated otherwise, would you have as a member of the Civil Service a person who has engaged in misrepresentation, fraud, dishonesty and has contemptuously refused to implement an *Order* of the DENR dated 6 October 1998?
>
> I believe that nowhere in the Civil Service Law is there such a qualification. The acts complained of also amount to grave misconduct and immorality – unless one only thinks of immoral as only referring to sex.
>
> On the other hand – granting *arguendo* that there is such a limited interpretation, how can having mistresses (which currently the government is relentlessly pursuing to rid of) fall within the ambit of a government official's duties and responsibilities?[11]

In an October 6, 2004 letter-opinion,[12] the CSC's Office for Legal Affairs (CSC-OLA) denied petitioner's appeal and affirmed the August 19, 2003 opinion of the CSC-CAR. The CSC-OLA held that the CSC had no jurisdiction over petitioner's complaint as it stemmed from a private transaction between the protagonists; petitioner's remedy was instead to seek execution of the DENR's Decision in H.A. NRD, 11-15-004 (E-11-16-004).

Petitioner, in a November 11, 2004 letter,[13] sought a reconsideration of the above October 6, 2004 opinion. Petitioner argued that under Section 4 of the Revised Uniform Rules on Administrative Cases in the Civil Service,[14] the jurisdiction of

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[10] *Id.* at 55-57.

[11] *Id.* at 56.

[12] See Resolution No. 080059, *id.* at 59-63 at 59-60.

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

[14] Section 4. *Jurisdiction of the Civil Service Commission*. – The Civil

the CSC over public officers or employees is not limited to their acts or omissions that are work-related; disciplinary action may be taken for their acts of dishonesty, immorality, oppression, notorious undesirability, conviction of a crime involving moral turpitude, habitual drunkenness, or gambling. Petitioner adds that even the lending of money at usurious rates, conducting illicit relations, and willful failure to pay just debts are grounds for disciplinary action.[15] Petitioner concluded that respondent's misrepresentation, fraud, dishonesty and refusal to implement the DENR's October 6, 1998 Order relative to the 1987 DENR land dispute constitute acts unbecoming a public official and fall within the jurisdiction of the CSC. Petitioner thus prayed that the CSC reconsider its October 6, 2004 letter; declare respondent guilty of misrepresentation, fraud, dishonesty and refusal to implement the DENR's October 6, 1998 Order; and impose upon her disciplinary action and penalties in accordance with civil service laws and regulations.

On January 14, 2008, the CSC issued Resolution No. 080059,[16] which decreed as follows:

> WHEREFORE, foregoing premises considered, the instant appeal is hereby DISMISSED for want of merit. Accordingly, the opinion of the Office for Legal Affairs dated October 6, 2004 is AFFIRMED.

In dismissing petitioner's appeal, the CSC held firm to the view that Monayao's purported misrepresentation, fraud,

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Service Commission shall hear and decide administrative cases instituted by, or brought before it, directly or on appeal, including contested appointments, and shall review decisions and actions of its offices and of the agencies attached to it.

Except as otherwise provided by the Constitution or by law, the Civil Service Commission shall have the final authority to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees.

[15] Citing *RTC Makati Movement Against Graft and Corruption v. Atty. Dumlao*, 317 Phil. 128 (1995); *Maguad v. De Guzman*, 365 Phil. 12 (1999); and *Flores v. Tatad*, 185 Phil. 475 (1980).

[16] *Rollo*, pp. 59-63; penned by CSC Chairperson Karina Constantino-David and concurred in by Commissioner Mary Ann Z. Fernandez-Mendoza.

dishonesty and refusal to implement the DENR Order in H.A. NRD, 11-15-004 (E-11-16-004) had no bearing on her official duties as a local government employee, and that petitioner's relief was to move for the execution of the unsatisfied DENR judgment and thus compel respondent to honor her notarized waiver of her rights to one-half portion of the land in dispute, or proceed to court for judicial intervention. It held, thus:

> After due consideration, the Commission is inclined to dismiss the present appeal.
>
> It is unavailing for the private complainant to insist that there are disciplinary grounds that are not work-related such that her complaint, rooted as it was on a private transaction, should not have been perfunctorily dismissed. True it is that some of the recognized grounds for administrative disciplinary actions against government officials and employees contemplate of private deeds. Two such examples are disgraceful and immoral conduct, and non-payment of just debt. However, it may be noted that these personal actions give rise to administrative culpability because they indubitably reflect on the moral fitness and integrity of the respondent public official or employee. This means that the commission of any of the said acts betrays the moral unfitness of the respondent public officer, which would make them amenable to disciplinary sanctions.
>
> In the herein case, the complaint is based on Monayao's supposed misrepresentation, fraud, dishonesty and refusal to implement an order of the Department of Environment and Natural Resources (DENR) relating to a land dispute. Yet, such actuation of Monayao relates to her private dealings with the private complainant, and has no bearing at all on the performance of her official duties as a local government employee. Instead of filing an administrative complaint, it would have been more appropriate for the private complainant to seek relief through the proper remedial action, which is, as noted in the impugned opinion, to move for execution of the unsatisfied DENR order or to proceed to court for possible judicial enforcement.
>
> In CSC Resolution No. 96-5593, dated September 4, 1996, the Commission pertinently ruled in this wise:
>
> > "x x x True, the respondents are government employees, but there is no showing that the non-remittance of said amount was committed while in the performance of their official duties

> x x x Thus, said failure or omissions on the part of the respondents were done in their personal or private capacity arising out of private transactions. It is therefore clear that the acts complained of do not constitute an administrative offense or offenses within the jurisdiction of the Commission. At any rate, the dispute between the herein complainants and the officers of said association, subject of this complaint, should be better resolved before a competent court."

More importantly, the Commission observes that the complaint is fatally defective. It contains mere conclusion of law, not concrete allegations of facts.[17]

Ruling of the Court of Appeals

In a Petition for Review[18] filed with the CA, petitioner questioned CSC Resolution No. 080059 and prayed that the CSC be ordered to assume jurisdiction over her complaint against respondent.

On November 28, 2008, the CA issued the assailed Decision which contained the following decretal portion:

> WHEREFORE, premises considered, the present petition is DISMISSED for lack of merit.
>
> SO ORDERED.[19]

The CA held that none of the circumstances mentioned in Section 46,[20] Chapter 7, Book V, of Executive Order No. 292

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[17] *Id.* at 62.

[18] Docketed as CA-G.R. SP No. 102407.

[19] CA *rollo*, p. 80.

[20] 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;

(2) Oppression;

(3) Neglect of duty;

(4) Misconduct;

(5) Disgraceful and immoral conduct;

(6) Being notoriously undesirable;

(7) Discourtesy in the course of official duties;

(8) Inefficiency and incompetence in the performance of official duties;

(9) Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift, or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons, or committing acts punishable under the anti-graft laws;

(10) Conviction of a crime involving moral turpitude;

(11) Improper or unauthorized solicitation of contributions from subordinate employees and by teachers or school officials from school children;

(12) Violation of existing Civil Service Law and rules or reasonable office regulations;

(13) Falsification of official document;

(14) Frequent unauthorized absences or tardiness in reporting for duty, loafing or frequent unauthorized absences from duty during regular office hours;

(15) Habitual drunkenness;

(16) Gambling prohibited by law;

(17) Refusal to perform official duty or render overtime service;

(18) Disgraceful, immoral or dishonest conduct prior to entering the service;

(19) Physical or mental incapacity or disability due to immoral or vicious habits;

(20) Borrowing money by superior officers from subordinates or lending by subordinates to superior officers;

(21) Lending money at usurious rates of interest;

(22) Willful failure to pay just debts or willful failure to pay taxes due to the government;

(23) Contracting loans of money or other property from persons with whom the office of the employee concerned has business relations;

(24) Pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations;

(25) Insubordination;

(26) Engaging directly or indirectly in partisan political activities by one holding a non-political office;

(EO 292), or the Administrative Code of 1987, is present in petitioner's case, and that her main complaint against respondent pertains to the latter's refusal to abide by the DENR judgment relative to the one-half portion of the property in dispute, which is not connected with or related to her position or performance of her functions as a public official. The appellate court added that while it is true that disciplinary action may be imposed for acts or omissions not connected with a public officer or employee's official functions or responsibilities, such as dishonesty or immorality, the act complained of – even if true – does not reflect on the moral fitness and integrity of the respondent which may affect her right to continue in office. Finally, the CA acknowledged that petitioner's accusations against respondent were unsubstantiated. On this point, however, the appellate court did not elaborate.

Petitioner filed a Motion for Reconsideration,[21] but the CA denied the same *via* its November 27, 2009 Resolution. Hence, petitioner instituted the present Petition.

Issue

Petitioner contends that the CA committed the following error:

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(27) Conduct prejudicial to the best interest of the service;

(28) Lobbying for personal interest or gain in legislative halls or offices without authority;

(29) Promoting the sale of tickets in behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases if there is no prior authority;

(30) Nepotism as defined in Section 60 of this Title.

(c) Except when initiated by the disciplining authority, no complaint against a civil service official or employee shall be given due course unless the same is in writing and subscribed and sworn to by the complainant.

(d) In meting out punishment, the same penalties shall be imposed for similar offenses and only one penalty shall be imposed in each case. The disciplining authority may impose the penalty of removal from the service, demotion in rank, suspension for not more than one year without pay, fine in an amount not exceeding six months' salary, or reprimand.

[21] CA *rollo*, pp. 85-92.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT SUSTAINED THE DECISION OF THE CIVIL SERVICE COMMISSION IN FINDING THAT THE ACTS AND OMISSIONS OF RESPONDENT, ARISING OUT OF HER PRIVATE TRANSACTIONS, DO NOT CONSTITUTE ADMINISTRATIVE OFFENSES WHICH THE SAID COMMISSION COULD TAKE COGNIZANCE OF AND DO NOT REFLECT ON HER MORAL FITNESS AND INTEGRITY AS A PUBLIC SERVANT.[22]

Petitioner's Arguments

Praying that the assailed CA dispositions be set aside and that the CSC be directed to take cognizance of her complaint against respondent, petitioner maintains in her Petition and Reply[23] that while respondent's dishonest acts and misrepresentations were committed in relation to a land dispute arising from her private dealings, they cast serious doubt as to her fitness to continue in the public service. Specifically, petitioner insists that while respondent claims that her father died in 1987, the latter was able to transfer – in 1992 – the land in dispute to respondent's children, which thus renders respondent guilty of dishonesty and misrepresentation. Moreover, respondent's defiance of the DENR decision by orchestrating the 1992 simulated sale demonstrates her disregard for rules and orders of duly constituted government authority, which is anathema to her position as a public servant.

Petitioner adds that dishonesty is a serious offense, indeed so grave that it is punishable by dismissal for the first offense under Section 23, Rule XIV of the Rules Implementing Book V of EO 292. And, contrary to the pronouncements of the CSC and CA, dishonesty which justifies dismissal from the service need not be committed in the course of the performance of duty by the public officer or employee.[24]

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[22] *Rollo*, p. 15.

[23] *Id.* at 82-88.

[24] Citing *Remolona v. Civil Service Commission*, 414 Phil. 590, 600 (2001).

Petitioner further asserts that, contrary to the pronouncements of the CA, her charges against respondent are fully substantiated and covered by sufficient attachments. She cites her July 30, 2003 sworn letter-complaint filed with the office of the Mayor of Alfonso Lista, which she claims was "complete with enclosures and attachments, evidencing the allegations"[25] against respondent.

Finally, petitioner points out that public office is a public trust; a person aspiring for public office must observe honesty, "candor, and faithful compliance with the law."[26] Dishonesty remains the same whether it is committed in relation to the public official's duties or in the course of his private dealings: it reflects on his "character and exposes the moral decay which virtually destroys his honor, virtue and integrity."[27]

Respondent's Arguments

In seeking the denial of the instant Petition, respondent in her Comment[28] tersely counters with a reiteration and citation of the CSC and CA pronouncements that her complained actuations relate to her private dealings and have no bearing on her official duties and functions; that petitioner's remedy is to move for the execution of the unsatisfied DENR decision or proceed to court for judicial enforcement; that the alleged acts do not reflect on her moral fitness and integrity, nor do they affect her right to continue in office; and finally, that petitioner's accusations remain unsubstantiated.

Our Ruling

The Court denies the Petition.

Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the

[25] *Rollo*, p. 17.

[26] Citing *Re: Administrative Case for Dishonesty and Falsification of Official Document: Benjamin R. Katly*, A.M. No. 2003-9-SC, March 25, 2004, 426 SCRA 236, 242.

[27] Citing *Civil Service Commission v. Cayobit*, 457 Phil. 452, 460 (2003).

[28] *Rollo*, pp. 76-78.

performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.

On the other hand, misconduct is a transgression of some established or definite rule of action, is a forbidden act, is a dereliction of duty, is willful in character, and implies wrongful intent and not mere error in judgment. More particularly, it is an unlawful behavior by the public officer. x x x[29]

Without a doubt, respondent's supposed dishonest acts and misrepresentations committed in relation to a land dispute arising from her private dealings cast doubt on her fitness to discharge her responsibilities as a public official. If it is true that respondent caused the execution of a forged or falsified deed of sale in 1992 in order to transfer the disputed portion of the property to her children, then she committed a dishonest act even as she is enjoined to adhere at all times to law, morality, and decency in her private and professional life. "[D]ishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty" by the public officer, for it "inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service."[30]

Indeed, at the very least, the acts complained of constitute conduct prejudicial to the best interest of the service, an administrative offense which need not be related to respondent's official functions.

x x x As long as the questioned conduct tarnished the image and integrity of his/ her public office, the corresponding penalty may be meted on the erring public officer or employee. The Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) enunciates, *inter alia*, the State policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 4(c) of the Code commands that "[public officials and employees] shall

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[29] *Japson v. Civil Service Commission*, G.R. No. 189479, April 12, 2011, 648 SCRA 532, 543-544.

[30] *Remolona v. Civil Service Commission*, *supra* note 24 at 600-601.

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. x x x"[31]

However, petitioner's accusations do not appear to hold water. From an examination of all her letters, pleadings, and other submissions – from her letter-complaint with the DSWD, to her sworn letter-complaint with the office of the Alfonso Lista Mayor, to her appeal letter to the CSC, to her letter-Motion for Reconsideration with the CSC, and finally her CA Petition for Review – it is evident that she offered nothing more than bare imputations against the respondent. Though she claims that respondent falsified a 1992 deed of sale whereby the disputed portion was transferred to her children, the deed of sale was never shown; a copy thereof was never attached to petitioner's complaints and other papers or pleadings. And if it is true that respondent's children were able to secure title to the disputed portion in their name through such falsified deed of sale, then petitioner could have simply attached a copy of the new title issued in their name. But she did not.

Petitioner is a lawyer; she should know that as the complainant in the administrative case, upon her lies the burden of proof to establish her cause of action against the respondent. All that is required is substantial evidence, yet she could produce none; the allegations in her complaint are not duly supported by necessary documents that would demonstrate the justness of her claims. While technicalities may be dispensed with in administrative proceedings, "this does not mean that the rules on proving allegations are entirely dispensed with. Bare allegations are not enough; these must be supported by substantial evidence at the very least."[32]

Thus, in the eyes of the law, respondent committed as yet no visible wrong. The CSC and the CA may not be faulted for deciding the way they did. From her numerous complaints alone, it can be seen that she had no cause of action against the respondent, for her accusations were not supported by the

[31] *Largo v. Court of Appeals*, 563 Phil. 293, 305 (2007).

[32] *Stolt-Nielsen Marine Services, Inc. v. National Labor Relations Commission*, 360 Phil. 881, 888-889 (1998).

required documentary evidence that should have been readily available to her, given that it consists of public documents which may be inspected and reproduced by permission from the government offices having custody thereof.

The Court therefore sees no reason to disturb the findings of the CSC and the CA. Their findings of fact bind the Court unless there is a showing of grave abuse of discretion, or that they were arrived at arbitrarily or in disregard of the evidence on record. Moreover, their conclusion – to the effect that what remains to be done is to cause the execution of the DENR Order in H.A. NRD, 11-15-004 (E-11-16-004) – is correct, and this may be achieved in the same administrative case or by filing a proper case in court.

While the law and justice abhor all forms of abuse committed by public officers and employees whose sworn duty is to discharge their duties with utmost responsibility, integrity, competence, accountability, and loyalty, the Court must protect them against unsubstantiated charges that tend to adversely affect, rather than encourage, the effective performance of their duties and functions. While –

> x x x We do not deny the citizen's right to denounce recreant public officials if their incompetence or lack of integrity or qualification may adversely affect the public service, but We certainly frown upon the practice of some misguided citizens to subvert the noble ends for which administrative discipline is designed which is to purge the public service of undesirable officials.[33]

WHEREFORE, the Petition is **DENIED**. The assailed November 28, 2008 Decision and the November 27, 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 102407 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Perez, Perlas-Bernabe, and *Leonen,* JJ.,* concur.

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[33] *Maspil v. Romero*, 158 Phil. 227, 228 (1974).

* Per Special Order No. 1636 dated February 17, 2014.

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(People *vs*. Salvador, G.R. No. 190621, Feb. 10, 2014) p. 389

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— The proceedings for punishment of indirect contempt are criminal in nature. *(Id.)*

— This form of contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. *(Id.)*

Power of contempt — Inherent in all courts in order to allow them to conduct their business unhampered by publication and comments which tend to impair the impartiality of their decisions or otherwise obstruct the administration of justice. (P/Supt/ Marantan *vs*. Atty. Diokno, G.R. No. 205956, Feb. 12, 2014) p. 642

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Breach of contract — Moral damages may be recovered only if the defendant acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. (Bignay Ex-ImPhils., Inc. *vs.* Union Bank of the Phils., G.R. No. 171590, Feb. 12, 2014) p. 514

CO-OWNERSHIP

Rights of co-owners — All co-owners are entitled to exercise the right of possession over the co-owned property. (Teodoro *vs*. Espino, G.R. No. 189248, Feb. 05, 2014) p. 229

COURT OF TAX APPEALS

Appellate jurisdiction — Includes jurisdiction to issue writs of certiorari against an interlocutory order of the Regional Trial Court (RTC) involving tax cases. (City of Manila *vs*. Judge Grecia-Cuerdo, G.R. No. 175723, Feb. 04, 2014) p. 9

COURT PERSONNEL

Conduct of — Court personnel must respect the rights of others and refrain from doing acts contrary to public safety and public interest. (Exec.Judge Contreras-Soriano *vs*. Salamanca, A.M. No. P-13-3119, Feb. 10, 2014) p. 355

— Court personnel should be free from any whiff of impropriety with respect to their duties in the judicial branch and also to their behaviour as private individuals. (Villahermosa, Sr. *vs*. Sarcia, A.M. No. CA-14-28-P, Feb. 11, 2014) p. 408

Conduct prejudicial to the best interest of the service — Committed in case an employee failed to account for the money received from litigants. (Exec. Judge Contreras-Soriano *vs*. Salamanca, A.M. No. P-13-3119, Feb. 10, 2014) p. 355

Dishonesty — Committed in case an employee failed to account for the money received from litigants. (Exec. Judge Contreras-Soriano *vs*. Salamanca, A.M. No. P-13-3119, Feb. 10, 2014) p. 355

— Committed when one misrepresented himself as a lawyer and drafted pleadings for a party litigant for a fee. (Villahermosa, Sr. *vs*. Sarcia, A.M. No. CA-14-28-P, Feb. 11, 2014) p. 408

— Defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. *(Id.)*

(Exec. Judge Contreras-Soriano *vs*. Salamanca, A.M. No. P-13-3119, Feb. 10, 2014) p. 355

Failure to comply with the legal requirement in the submission of Statement of Assets, Liabilities, and Net Worth (SALN) — A fine shall be imposed. (Marquez *vs*. Judge Ovejera, A.M. No. P-11-2903, Feb. 05, 2014) p. 137-138

Grave misconduct — Committed in case a court stenographer fraudulently misrepresented her ability to facilitate a legal proceeding in exchange for money. (Galindez *vs*. Susbilla-de Vera, A.M. No. P-13-3126, Feb. 04, 2014) p. 1

— Soliciting and receiving money from party-litigants is a case of grave misconduct. (Villahermosa, Sr. *vs*. Sarcia, A.M. No. CA-14-28-P, Feb. 11, 2014) p. 408

DAMAGES

Exemplary damages — Awarded only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. (Cosare *vs*. Broadcom Asia, Inc., G.R. No. 201298, Feb. 05, 2014) p. 316

DENIAL OF THE ACCUSED

Defense of — When unsupported and unsubstantiated by clear and convincing evidence, it becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. (People *vs*. Salvador, G.R. No. 190621, Feb. 10, 2014) p. 389

DOUBLE JEOPARDY

Doctrine of — Only applies when: (1) a first jeopardy attached; (2) it has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. (Ocampo *vs*. Judge Abando, G.R. No. 176830, Feb. 11, 2014) p. 441

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — The continuity, existence or termination of a relationship is measured by the following yardstick: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. (Intel Technology Phils., Inc. *vs*. NLRC, G.R. No. 200575, Feb. 05, 2014) p. 298

EMPLOYMENT, TERMINATION OF

Abandonment of work — To constitute abandonment of work, two elements must concur: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act. (Cosare *vs*. Broadcom Asia, Inc., G.R. No. 201298, Feb. 05, 2014) p. 316

Constructive dismissal — Occurs when there is cessation of work because continued employment is rendered impossible, unreasonable, or unlikely as when there is a demotion in rank or diminution in pay or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee leaving the latter with no other option but to quit. (Cosare *vs*. Broadcom Asia, Inc., G.R. No. 201298, Feb. 05, 2014) p. 316

Gross inefficiency — Committed in case a teacher failed to meet the reasonable standards set by the school in teaching a particular subject. (International School *vs*. International School Alliance of Educators, G.R. No. 167286, Feb. 05, 2014) p. 147

— Observation made by superiors and peers may be considered in determining whether the employee was grossly inefficient or not. *(Id.)*

Grounds for — An employee who has been dismissed for any of the causes enumerated under the Labor Code is not entitled to separation pay, except on the grounds of equity and social justice. (International School *vs*. International School Alliance of Educators, G.R. No. 167286, Feb. 05, 2014) p. 147

Illegal dismissal — A complaint for illegal dismissal filed by an officer who is not classified as a corporate officer is cognizable by the Labor Arbiter. (Cosare *vs*. Broadcom Asia, Inc., G.R. No. 201298, Feb. 05, 2014) p. 316

— A dispute involving a charge of illegal dismissal falls under the jurisdiction of the Labor Arbiter. *(Id.)*

— Illegally dismissed employee is entitled to: (1) either reinstatement, if viable, or separation pay, if reinstatement is no longer viable; and (2) backwages. *(Id.)*

— When the officer claiming to have been illegally dismissed is classified as a corporate officer the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts. *(Id.)*

Resignation — Could not inferred from the acts of the employee before and after the alleged resignation. (Intel Technology Phils., Inc. *vs*. NLRC, G.R. No. 200575, Feb. 05, 2014) p. 298

Separation pay — Proper when reinstatement is not likely to create an efficient and productive work environment. (United Tourist Promotion *vs*. Jersey, G.R. No. 205453, Feb. 05, 2014) p. 337

EVIDENCE

Motive — Not sufficient to support a conviction. (Atienza *vs*. People, G.R. No. 188694, Feb. 12, 2014) p. 570

Proof beyond reasonable doubt — The degree of proof that, after investigation of the whole record, produces moral certainty in an unprejudiced mind of the accused's culpability. (Atienza *vs*. People, G.R. No. 188694, Feb. 12, 2014) p. 570

FORCIBLE ENTRY

Cases of — The ground rules in a forcible entry case are: (1) one employs force, intimidation, threat, strategy or stealth to deprive another of physical possession of real property; (2) plaintiff must allege and prove prior physical possession of the property in litigation until deprived thereof by the defendant; (3) the sole question for resolution hinges on the physical or material possession of the property; and (4) ejectment cases proceed independently of any claim of ownership, and the plaintiff needs merely to prove prior possession de facto and undue deprivation thereof. (Teodoro *vs*. Espino, G.R. No. 189248, Feb. 05, 2014) p. 229

FORUM SHOPPING

Certification against forum shopping — Must be signed by the principal parties themselves and not by the attorney. (Atty. Agustin *vs*. Cruz-Herrera, G.R. No. 174564, Feb. 12, 2014) p. 533

Concept — An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs. (Heirs of Marcelo Sotto *vs*. Palicte, G.R. No. 159691, Feb. 17, 2014) p. 651

— Exists when the following elements are present, namely: (1) identity of parties, or at least such parties as represent the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (3) the 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.)*

— It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. *(Id.)*

— The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. *(Id.)*

— There is forum shopping when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court. *(Id.)*

Identity of cause of action as an element — Alleged insufficiency of complaint must appear on the face of the complaint and nowhere else. (Heirs of Marcelo Sotto *vs*. Palicte, G.R. No. 159691, Feb. 17, 2014) p. 651

GUARANTY

Extinguishment of — An extension granted to the debtor by the creditor without the consent of the guarantor extinguishes

the guaranty. (Trade and Investment Dev't. Corp. of the Phils. *vs*. Asia Paces Corp., G.R. No. 187403, Feb. 12, 2014) p. 555

Liability of guarantor — He binds himself to the creditor to fulfil the obligation of the principal debtor in case the latter should fail to do so. (Trade and Investment Dev't. Corp. of the Phils. *vs*. Asia Paces Corp., G.R. No. 187403, Feb. 12, 2014) p. 555

HOMICIDE

Commission of — Civil liabilities of the accused; cited. (Guevarra *vs*. People, G.R. No. 170462, Feb. 05, 2014) p. 183

— Elements of the crime are: (1) a person is killed; (2) the accused killed that person without any justifying circumstance; (3) the accused had the intention to kill, which is presumed; and (4) the killing was not attended by any of the qualifying circumstances of murder, or that of parricide or infanticide. *(Id.)*

Frustrated homicide — Civil liabilities of the accused; cited. (Guevarra *vs*. People, G.R. No. 170462, Feb. 05, 2014) p. 183

— Committed when: (1) an accused intended to kill his victim; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstances for murder is present. *(Id.)*

INTERROGATORIES

Conduct of — Service of written interrogatories is required before an adverse party may be compelled to testify in court. (Sps. Afulugencia *vs*. Metropolitan Bank & Trust Co., G.R. No. 185145, Feb. 05, 2014) p. 196

INTRA-CORPORATE CONTROVERSY

Concept — Determined by the status or relationship of the parties and the nature of the question that is the subject of the controversy. (Cosare *vs*. Broadcom Asia, Inc., G.R. No. 201298, Feb. 05, 2014) p. 316

— Falling within the jurisdiction of regular courts, an intra-corporate controversy has been regarded in its broad sense to pertain to disputes that involve any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or offices; and (4) among the stockholders, partners or associates, themselves. *(Id.)*

— When the officer claiming to have been illegally dismissed is classified as a corporate officer, the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts. *(Id.)*

JUDICIAL REVIEW

Actual case or controversy — Involves a conflict of legal rights, an assertion of opposite legal claims susceptible to judicial resolution. (Remman Enterprises, Inc. *vs*. Professional Regulatory Board of Real Estate Service, G.R. No. 197676, Feb. 04, 2014) p. 104

JURISDICTION

Concept — Determined by law and the allegations of the complaint. (Dep't. of Agrarian Reform *vs*. Trinidad Valley Realty & Dev't. Corp., G.R. No. 173386, Feb. 11, 2014) p. 419

— Once vested, remains vested irrespective of whether or not the plaintiff is to recover upon all or some of the claims asserted in the complaint. *(Id.)*

Lack of jurisdiction over the subject matter or nature of the action — May be raised at any stage of the proceedings. (Atienza *vs*. People, G.R. No. 188694, Feb. 12, 2014) p. 570

JUSTIFYING CIRCUMSTANCES

Self-defense — Accused must prove the following elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such

aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. (Guevarra *vs*. People, G.R. No. 170462, Feb. 05, 2014) p. 183

LABOR STANDARDS

13th month benefit — Managerial employees are not entitled thereto. (United Tourist Promotion *vs*. Jersey, G.R. No. 205453, Feb. 05, 2014) p. 337

MANILA ECONOMIC AND CULTURAL OFFICE (MECO)

Creation of — It is organized as a non-stock corporation. (Funa *vs*. Manila Economic and Cultural Office, G.R. No. 193462, Feb. 04, 2014) p. 63

— Not owned or controlled by the government; it is a sui generis entity. *(Id.)*

— Performs functions with a public aspect. *(Id.)*

— Verification fees and consular fees collected by MECO should be audited by the Commission on Audit. *(Id.)*

MARRIAGE, DECLARATION OF NULLITY OF

Psychological incapacity as a ground — Emotional immaturity and irresponsibility cannot be equated with psychological incapacity. (Rep. of the Phils. *vs*. De Gracia, G.R. No. 171557, Feb. 12, 2014) p. 502

— Must be established by independent evidence other than expert opinions of psychologists. *(Id.)*

— Refers to mental and not merely physical incapacity that causes a party to be truly incognitive of the basic marital covenants. *(Id.)*

MUNICIPAL TRIAL COURT

Jurisdiction — Includes falsification of public document cases. (Atienza *vs*. People, G.R. No. 188694, Feb. 12, 2014) p. 570

MURDER

Commission of — Accused shall be liable for (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and interest, in proper cases. (People *vs*. Gunda, G.R. No. 195525, Feb. 05, 2014) p. 289

— Punishable by *reclusion perpetua* without eligibility for parole. *(Id.)*

— The following must be established: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of the qualifying circumstances under Article 248 of the Revised Penal Code; and (4) the killing does not constitute parricide or infanticide. *(Id.)*

NOTARIAL LAW (P.A. NO. 2103)

Notarization of private document — Converts such document into a public one, and renders it admissible in court without further proof of its authenticity. (Talisic *vs*. Atty. Rinen, A.C. No. 8761, Feb. 12, 2014) p. 497

Notary public — Must notarize a document only when the signatories are the very same persons who executed and personally appeared before him to attest to the contents and truth of the statements therein. (Talisic *vs*. Atty. Rinen, A.C. No. 8761, Feb. 12, 2014) p. 497

Violation of — An infraction where the liability attaches not only as a notary public but also as a lawyer. (Ang *vs*. Atty. Gupana, A.C. No. 4545, Feb. 05, 2014) p. 127

POLITICAL OFFENSE

Doctrine — Common crimes, perpetrated in furtherance of a political offense, are divested of their character as "common" offenses and assume the political complexion of the main crime of which they are mere ingredients, and consequently, cannot be punished separately from the principal offense,

or complexed with the same, to justify the imposition of a graver penalty. (Ocampo *vs*. Judge Abando, G.R. No. 176830, Feb. 11, 2014) p. 441

— Persons committing crimes against humanity must not be allowed to hide behind the political offense doctrine; torture and summary execution as part of rebellion are abhorred. (Ocampo *vs*. Judge Abando, G.R. No. 176830, Feb. 11, 2014; *Leonen, J., concurring opinion*) p. 441

PRELIMINARY INJUNCTION

Petition for — Issues involving the incident on the preliminary injunction become moot and academic by the rendition of the decision in the main case which has become final and executory. (City of Manila *vs*. Judge Grecia-Cuerdo, G.R. No. 175723, Feb. 04, 2014) p. 9

PRELIMINARY INVESTIGATION

Concept — A substantive right and a component of due process in the administration of criminal cases. (Ocampo *vs*. Judge Abando, G.R. No. 176830, Feb. 11, 2014) p. 441

Probable cause — As a ground for issuance of a warrant of arrest has been defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. (Ocampo *vs*. Judge Abando, G.R. No. 176830, Feb. 11, 2014) p. 441

Procedure — Rule that if respondent cannot be subpoenaed, the Prosecutor shall resolve the complaint based on the evidence presented by the complaint. (Ocampo *vs*. Judge Abando, G.R. No. 176830, Feb. 11, 2014) p. 441

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Judicial confirmation of imperfect or incomplete title — Applicants for registration of title must sufficiently establish (1) that the subject land forms part of the disposable and alienable lands of the public domain; (2) that the applicant and his predecessors-in-interest have

been in open, continuous, exclusive, and notorious possession and occupation of the same; and (3) that it is under a bona fide claim of ownership since June 12, 1945, or earlier. (Rep. of the Phils. *vs*. Cortez, G.R. No. 186639, Feb. 05, 2014) p. 212

— Certification from the proper government agency stating that the parcel of land subject of the application for registration is alienable and disposable is required. *(Id.)*

— Lands of the public domain that are patrimonial in character are susceptible to acquisitive prescription and eligible for registration. *(Id.)*

PUBLIC OFFICERS AND EMPLOYEES

Administrative proceeding against — Allegations must be supported by substantial evidence. (Balasbas *vs*. Monayao, G.R. No. 190524, Feb. 17, 2014) p. 664

Dishonesty — Defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. (Balasbas *vs*. Monayao, G.R. No. 190524, Feb. 17, 2014) p. 664

Misconduct — Defined as a transgression of some established and definite rule of action, more particularly, unlawful behaviour or gross negligence by a public officer. (Balasbas *vs*. Monayao, G.R. No. 190524, Feb. 17, 2014) p. 664

RAPE

Commission of — Established when a man has carnal knowledge of a woman under any of the following circumstances: (1) through force, threat or intimidation; (2) when the offended party is deprived of reason or otherwise unconscious; (3) by means of fraudulent machination or grave abuse of authority; and (4) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (People *vs*. Jastiva, G.R. No. 199268, Feb. 12, 2014) p. 607

(People *vs.* Patentes, G.R. No. 190178, Feb. 12, 2014) p. 590

— Imposable penalty. (People *vs*. Jastiva, G.R. No. 199268, Feb. 12, 2014) p. 607

— Not negated by failure of the victim to shout for help at the time of rape and lack of resistance when the rape victim was intimidated into submission. *(Id.)*

Prosecution of — In reviewing rape cases, the Court is guided by the following principles: (1) to accuse a man of rape is easy, but to disprove the accusation is difficult, though the accused may be innocent; (2) inasmuch as only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fail on its own merit and should not be allowed to draw strength from the weakness of the evidence for the defense. (People *vs*. Jastiva, G.R. No. 199268, Feb. 12, 2014) p. 607

(People *vs.* Patentes, G.R. No. 190178, Feb. 12, 2014) p. 590

REAL ESTATE SERVICE ACT OF THE PHILIPPINES (R.A. NO. 9646)

Application — Does not violate the one title-one subject rule of the Constitution. (Remman Enterprises, Inc. *vs*. Professional Regulatory Board of Real Estate Service, G.R. No. 197676, Feb. 04, 2014) p. 104

— Does not violate the rule against deprivation of property without due process of law and equal protection clause. *(Id.)*

SALES

Warranty against eviction — Eviction shall take place whenever by final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or of a part of the thing purchased. (Bignay Ex-ImPhils., Inc. *vs*. Union Bank of the Phils., G.R. No. 171590, Feb. 12, 2014) p. 514

— In case eviction occurs, the vendee shall have the right to demand of the vendor, among others, the return of the value which the thing sold had at the time of the eviction, be it greater or less than the price of the sale; the expenses of the contract, if the vendee has paid him; and the damages and interests, and ornamental expenses, if the sale was made in bad faith. *(Id.)*

SEAFARERS

Seafarers employment contract — In case of expiration of contract and if the vessel is still outside the Philippines, the seafarer shall continue his service on board until the vessel's arrival and he shall be entitled to earned wages and benefits provided in his contract. (Unica *vs*. Anscor Swire Ship management Corp., G.R. No. 184318, Feb. 12, 2014) p. 550

— No implied renewal of expired contract for the seaman who could not disembark from the vessel which was still in the middle of the sea. *(Id.)*

STATUTES

One-title one subject rule — Satisfied if all the parts of the statutes are related and are germane to the subject matter expressed in the title, or as long as they are not inconsistent with or foreign to the general subject and title. (Remman Enterprises, Inc. *vs*. Professional Regulatory Board of Real Estate Service, G.R. No. 197676, Feb. 04, 2014) p. 104

SUB JUDICE RULE

Rationale — Courts, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies. (P/Supt/ Marantan *vs*. Atty. Diokno, G.R. No. 205956, Feb. 12, 2014) p. 642

SUBPOENA

Motion for subpoena duces tecum ad testificandum — Filing of an opposition thereto cures the defect of lack of notice of hearing. (Sps. Afulugencia *vs.* Metropolitan Bank & Trust Co., G.R. No. 185145, Feb. 05, 2014) p. 196

SUPREME COURT

Judicial power — The Court sustains the legal standing of a party as concerned citizen to file a petition for *mandamus* that raises issues of transcendental importance. (Funa *vs.* Manila Economic and Cultural Office, G.R. No. 193462, Feb. 04, 2014) p. 63

SURETYSHIP

Surety — Although the contract of surety is in essence secondary only to a valid principal obligation, his liability to the creditor is direct, primary and absolute; he became liable for the debt and duty of another although he possess no direct or personal interest over the obligations nor does he receive any benefit therefrom. (Trade and Investment Dev't. Corp. of the Phils. *vs.* Asia Paces Corp., G.R. No. 187403, Feb. 12, 2014) p. 555

— As compared to a guarantor, a surety is responsible for the debt's payment at once if the principal debtor makes default, whereas a guarantor pay only if the principal debtor is unable to pay. *(Id.)*

— Considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable. *(Id.)*

TAX REFUND

Claim for — Must be construed *strictissimi juris* against the entity claiming the same, being in the nature of tax exemptions. (Commissioner of Internal Revenue *vs.* Team Sual Corp., G.R. No. 194105, Feb. 05, 2014) p. 266

VALUE-ADDED TAX

Refunds or tax credit of input tax — Taxpayer can file his administrative claim for refund or credit anytime within the two-year prescriptive period and the Commission of Internal Revenue will then have 120 days from such filing to decide the claim; if the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the Court of Tax Appeals. (Commissioner of Internal Revenue *vs*. Team Sual Corp., G.R. No. 194105, Feb. 05, 2014) p. 266

— The 120-day mandatory period and the 30-day period within which the taxpayer-claimant may file an appeal with the Court of Tax Appeals need not fall within the two-year prescriptive period for filing a claim for refund/ tax credit. *(Id.)*

WITNESSES

Credibility — Findings of trial court, especially when affirmed by the Court of Appeals is respected, in the absence of any clear showing that trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. (People *vs*. Jastiva, G.R. No. 199268, Feb. 12, 2014) p. 607

— Testimony must be compatible with human character. (People *vs*. Patentes, G.R. No. 190178, Feb. 12, 2014) p. 590

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